



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

November 28, 2007

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 7, 2007. Your hearing request was based on the Department of Health and Human Resources' action to apply a third-level sanction to your WV Works case.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the WV Works Program is based on current policy and regulations. Some of these regulations state in part: Sanctions are applied to WV WORKS cases in the form of check reductions and, for the third or subsequent offense, termination of benefits. (West Virginia Income Maintenance Manual § 13.9)

The information, which was submitted at your hearing, revealed that a member of the Assistance Group did not comply with terms on the PRC and did not establish good cause for not doing so.

It is the decision of the State Hearing Officer to uphold the action of the Department to impose a third-level sanction to your WV Works case for non-cooperation.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Judy B. Bell, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Claimant,

v.

Action Number: 07-BOR-2211

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 7, 2007 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on November 7, 2007 on a timely appeal, filed September 26, 2007. It should be noted that this hearing was originally scheduled for October 25, 2007. It was rescheduled at the request of the Claimant for November 7, 2007.

II. PROGRAM PURPOSE:

The Program entitled WV Works is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

WV Works was created by Senate Bill 140, Article 9 of the West Virginia Code and the Temporary Assistance to needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, Claimant

_____, Claimant's Spouse

Nigel Maxey, Family Support Specialist, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department was correct in their action to impose a sanction against the Claimant's WV Works case.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Policy § 1.25, 13.9 & 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Personal Responsibility Contract (PRC) dated 08/13/2007
- D-2 Good Cause Appointment Letter dated 08/20/2007
- D-3 NNSA Good Cause Appointment Letter dated 08/20/2007
- D-4 Notification Letter dated 09/06/2007
- D-5 Letter from _____ received 09/10/2007
- D-6 WV Income Maintenance Manual Policy §13.9
- D-7 WV Income Maintenance Manual Policy §13.10

Claimant's Exhibit:

- C-1 Claimant's Summary

VII. FINDINGS OF FACT:

- 1) The Claimant and her husband applied for WV Works on 08/13/2007. He signed the Personal Responsibility Contract in which he agreed to register for the SPOKES-OPTIONS class on August 17, 2007; and to attend that class for 30 hours per week. It is noted on the PRC that he would "make satisfactory progress". (Exhibit D-1)
- 2) The Claimant's spouse did not attend the class and a sanction was initiated.
- 3) A letter was sent to the Claimant dated 08/17/2007. It reads in part: A personal Responsibility Contract (PRC) sanction has been applied to your Cash Assistance Group effective October. This is the fourth sanction applied due to the failure of 'D' to comply with the terms of the Personal Responsibility Contract as he did not go to SPOKES/OPTIONS registration today. A good cause appointment was scheduled for 08/27/2007. (Exhibit D-3) A second good cause appointment letter was sent 08/20/2007 for the same date as above. (Exhibit D-2) These were mailed from Charleston on August 20, 2007.

- 4) Testimony from the Department's Representative revealed that an additional 13-day letter was sent out on 09/06/2007 to allow the Claimant an additional appeal period as the original letter had not been generated on 08/17/2007 due to monthly notification deadlines. (Exhibit D-4)
- 5) Testimony from the Department's Representative revealed that [REDACTED] did not keep the good cause appointment 08/27/2007. He and the Claimant gave various reasons as to why he did not attend class. These reasons include trying to get his CDLs on 08/17/2007, wife's uncle died and he could not be in class on the 17th or 20th of August, trying to get his GED online, and car problems. The Claimant never reported to his agreed assignment and was only in contact with the Adult Learning Center one time – 08/17/2007 – telling them he could not be there as he was going to get his CDLs. According to the Department's Representative, the class that [REDACTED] took online was not, in fact, a GED class, nor did he get a GED. He got a diploma from an online diploma mill that is not accredited by any state or the federal government. The vehicle arguments did not surface until August 30, and, after the vehicle was fixed, the client still did not report to class. The Department contends that the death of an uncle should not delay reporting to class for a long period of time. The case was closed effective September 2007.
- 6) Testimony from the Claimant revealed that she called the end of August to request their case be closed for September because with all of the problems they were having with vehicles they knew her husband would not be able to attend SPOKES. Her uncle died on 08/18/2007. They had vehicle problems and various appointments to go to. The Claimant's father's name is on one of the vehicles and he does not allow her husband to drive the vehicle because of a drinking problem. She feels the sanction should not be applied as they requested the case closed prior to the sanction being applied. She is disabled and there has to be someone there to drive her and the children to appointments. They had to drive their daughter to school on 08/27/2007 and had to cancel the appointment.
- 7) Testimony from the Claimant's spouse revealed that he called the Adult Learning Center when he learned he could not attend as scheduled but no one returned his call.
- 8) Testimony from the Department's Representative revealed that the Claimant did call the end of August to request the case closed. However, once a sanction has been imposed, it has to be dealt with. A second letter was sent 09/06/2007 in order to ensure that the Claimant had appeal rights and could continue benefits.
- 9) **WV Income Maintenance Manual § 13.9A:**

When a member of the AG or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC, a sanction must be imposed unless the Worker determines that good cause exists.

Sanctions are applied to WV WORKS cases in the form of check reductions and, for the third or subsequent offense, termination of benefits. The amount of the check reduction is a fixed amount and is determined as follows:

1st Offense = 1/3 reduction in the check amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months

2nd Offense = 2/3 reduction in the check amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months. If the case is in a 1/3 reduction when the 2nd sanction is applied, the 2/3 reduction is applied to the check amount the client is

currently eligible to receive, prior to recoupment; it is not applied to the check amount which has already been reduced by 1/3.

3rd Offense = Ineligibility for cash assistance for 3 months or until compliance, whichever is later. All benefit reductions due to imposition of a sanction require advance notice. Unless the client shows good cause for non-compliance, the sanction is imposed.

10) **WV Income Maintenance Manual § 1.25:**

Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in imposition of a sanction against the AG. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred.

11) **WV Income Maintenance Manual Section § 13.10 states, in part:**

If a parent or other caretaker relative included in the payment quits or refuses employment within the 30 day period prior to the date of application or when the client fails or refuses to meet his work requirement and/or adhere to his PRC requirements, the Worker must determine the reason for such failure or refusal.

Failure or refusal to comply, without good cause, results in imposition of a sanction.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period. See item 13.8, A.

The client has good cause for failure to participate when:

- The parent or included non-parent caretaker quits employment or fails to participate in his assigned activity due to enrollment and full-time attendance in school, training or an institution of higher learning.....
- A single parent can prove that appropriate child care is unavailable for his child, age 6 or younger.
- He is required to appear in court or for jury duty.
- He is experiencing a family crisis such as, but not limited to:

Death of his spouse, parent, child, or stepchild.

A life-threatening illness of a spouse, parent or child requires the client's immediate attention.

Domestic violence and/or the need to protect abused children makes participation impossible, dangerous, or embarrassing and the client accepts a referral to Social Services or a Domestic Violence center for assistance.

The minimum suitability standards for the specific activity are not met.....

Based on knowledge of the client and his life circumstances, the Worker determines

that the client has not met the requirement, but has complied to the best of his ability, understanding of the requirement, understanding of the sanction process and/or level of motivation. The Worker has considerable discretion in imposing a sanction. The Worker may determine that the requirement was inappropriate based upon additional assessment. In addition, the Worker may determine that not applying a sanction in a particular situation provides more motivation for future participation than the imposition of a sanction.....”

-A requirement of the Office of Social Services precludes participation for a specified period of time.

-He refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.

-He would be required to travel more than one hour round trip to participate, unless it can be shown that local community travel standards exceed the one-hour limitation.

VIII. CONCLUSIONS OF LAW:

- 1) Policy is clear in § 1.25 that failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in imposition of a sanction.
- 2) The Claimant’s spouse agreed on the PRC dated August 13, 2007 to register for the SPOKES-OPTIONS class on August 17, 2007; and to attend that class for 30 hours per week. The Claimant’s spouse did not attend the class.
- 3) There were several reasons given as to why the Claimant’s spouse did not comply with the terms of his PRC. The Claimant also contends that their request for case closure the end of August should negate the sanction.
- 4) The first notification in regard to the sanction was mailed August 20, 2007. A good cause appointment was scheduled for August 27, 2007. A second notice went out in September.
- 5) Policy in § 13.10 specifies that once a sanction has been imposed it cannot be stopped until the appropriate time has elapsed.
- 6) There was no clear, convincing evidence presented at the hearing to show the Claimant’s spouse had good cause as outlined in Part VII., Conclusions of Law, #11 above to not adhere to his PRC.
- 7) The termination of the case is valid.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is upheld in the decision to apply a third-level sanction for the failure of an AG member to adhere to his Personal Responsibility Contract. The action described in the notification letter dated August 17, 2007 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 28th Day of November 2007.

**Margaret M. Mann
State Hearing Officer**