



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

February 9, 2007

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 18, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your benefits under the WV WORKS Program.

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 as follows: when a member of the benefit group 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 3rd or subsequent offense, termination of benefits. (Section 13.9 of the West Virginia Income Maintenance Manual)

The information which was submitted at your hearing revealed that you did not comply with the requirements on your PRC and did not establish good cause for not doing so.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to reduce your benefits.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Tammy Turner, DHHR

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

____,

Claimant,

v.

Action Number: 06-BOR-3205

**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 February 5, 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 January 18, 2007 on a timely appeal, filed October 25, 2006. It should be noted that this hearing was originally scheduled for December 14, 2006. The Claimant could not keep this appointment for medical reasons and the hearing was rescheduled for January 18, 2007. The hearing record was left open until February 5, 2007 in order for the claimant to submit some employment records. The information originally had to be postmarked by October 26, 2006. This date was changed to February 2, 2007 at the request of the Claimant. The information was not received by the State Hearing Officer.

It should be noted here that the Claimant's benefits have been continued pending a hearing decision.

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.

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.

WV Works will expect and assist parents and caretaker-relatives in at-risk families to support their dependent children. Every parent who receives cash assistance has a responsibility to participate in an activity to help prepare for, obtain and maintain gainful employment. WV Works will promote the value and the capabilities of individuals.

The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____, Claimant (By Telephone)
_____, Claimant's Witness and a member of the AG (By Telephone)
Tammy Turner, Department Hearing Representative

Observing:
Laura Cochran, Family Support Specialist

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(s) to be decided is whether the Department is correct in applying a sanction because an AG member did not comply with the terms of her Personal Responsibility Contract and did not show good cause for not doing so.

V. APPLICABLE POLICY:

Sections 1.25T, 13.9, and 13.10 of the West Virginia Income Maintenance Manual

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letter dated 10/19/2006
- D-3 Copy of section 13.9 of the West Virginia Income Maintenance Manual
- D-4 Copy of section 10.24D of the West Virginia Income Maintenance Manual
- D-5 Copy of the Personal Responsibility Contract dated 04/03/2006
- D-6 Copy of Pre-Interview Screener Form dated 10/10/2006
- D-7 Copy of Form DFA-RR-1 dated 10/10/2006
- D-8 Copy of GMPS 11/05 dated 10/10/2006
- D-9 Copy of OFS-2 dated 10/10/2006
- D-10 Case Comments dated 10/18/2006 through 10/26/2006

D-11 Copy of pay stubs from [REDACTED] for pay period ending 10/02/2006 with pay date of 10/10/2006

D-12 Department's Summary

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of WV WORKS.
- 2) The Claimant signed Part 1 of the Personal Responsibility Contract on 04/03/2006. (D-5) One of the statements reads "I will report changes in my life situations as required on the Rights and Responsibilities section of my application for assistance. Changes may include, but are not limited to, a change in address, a change in telephone number, someone moving in/out of my home, getting/losing a job, changes in work hours, and any changes in income, earnings, or assets." The Claimant also signed form GMPS 11/05 on 10/10/2006. (D-8) This is a form in which clients are informed of their responsibilities to report information. One of the statements reads "Income: Any money received by anyone living or staying in the same place that I am living or staying."
- 3) The Claimant and Mr. _____. were in the [REDACTED] County DHHR office on 10/10/2006 to complete a case review. At that time they reported orally and in writing that no one in the home was employed. The Claimant signed the review form 10/10/2006. She signed the review form attesting "I have reviewed and had read to me the information contained in this automated portion of the application form and I understand the information.....Under penalty of perjury, I certify that the statements are true and correct." (D-9) The Claimant signed the Rights & Responsibilities section of the application 10/10/2006. (D-7) #31 on the form reads in part "**I agree** to notify DHHR of the following changes within 10 days if: B) Anyone obtains/loses employment." Case recording dated 10/18/2006 (D-10) reads in part that a sanction was being entered for the Claimant was specifically asked the question about employment and denied it.
- 4) On 10/18/2006 the caseworker received an alert through the computer's data exchange system that the Claimant had been hired by [REDACTED] [REDACTED]. The caseworker called the Claimant that day and she admitted that she did start work there on 09/23/2006. The manager of [REDACTED] was also contacted on the same date and confirmed employment start date as 09/23/2006.
- 5) Testimony from the caseworker revealed that the Claimant had been employed a total of seventeen days prior to coming in for her review on 10/10/2006. Good cause was not established.
- 6) A notification letter was sent dated 10/19/2006 which reads in part: Your WV WORKS will decrease from \$288.00 to \$93.00 effective 11/01/06. Reason: A first sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).....This sanction is being applied due to the failure of ____ to meet the terms of the Personal Responsibility Contract by FAILING TO REPORT CHANGES IN YOUR LIFE SITUATION. A good cause interview was scheduled for 10/26/06 at 9:00. (D-2)

- 7) Testimony from the Claimant revealed she did start work at [REDACTED] 09/23/2006. Mr. _____. had asked at the time of review how long one had to report if they went to work and was told by the caseworker "ten days". She didn't say business days or working days. She said ten days. The Claimant stated she had not worked ten days. There were days he called in when she couldn't work. She worked a total of seven days. The last day she worked was 10/02/2006. She is now on Worker's Compensation. She fell and got hurt on 09/30/2006. She worked an hour and a half on 10/01/2006. On 10/02/2006 she worked from 5:00 to 8:30. The next day is when she went to the doctor and she hasn't worked since.
- 8) Testimony from Mr. _____. revealed that he understood 10 days to mean he had ten days to see if he could work or not.
- 9) Evidence shows two check stubs from [REDACTED] with the Claimant's name on them. One is for the period ending 10/02/2006 with a pay date of 10/10/2006. The other is for the period ending 10/16/2006 with a pay date of 10/24/2006. (D-11) Testimony from the Claimant revealed she was held back two weeks before getting paid. She did not get a check until 10/03/2006. That is the only check she received. She worked two weeks and got a check.
- 10) The hearing record was left open until 02/05/2007 in order for the Claimant to send in her employment records from [REDACTED]. This information was to be postmarked by 02/02/2007. The Claimant never submitted this information.
- 11) Section 1.25T of the West Virginia Income Maintenance Manual reads in part:

The Personal Responsibility Contract (PRC), form OFA-PRC-1, is negotiated contract between the adult or emancipated minor members of the WV WORKS AG and the Worker as the representative of the Department. There are 2 parts to the form and each serves a different purpose. Refusal or other failure, without good cause, to sign either part of the form results in ineligibility for the entire AG. Completion and signature of both parts of the form are required prior to approving the WV WORKS AG.

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.

PRC - Part 1

Part 1 of the PRC is the same for all clients. It states the purpose of the WV Works Program and lists the client=s rights and responsibilities. Each adult and emancipated minor AG member must sign Part 1 of his own PRC. In addition, the worker must sign the form as the Department=s representative. The client=s signature indicates that he understands and accepts the responsibility inherent in the Program. The worker=s signature indicates that he has explained the client=s rights and responsibilities and the Department=s responsibilities to the client. It also indicates that the worker has addressed all of the client=s questions and concerns before requesting him to sign it.

PRC - Part 2

Part 2 of the PRC is specific to each individual and is the Self Sufficiency Plan. It lists the goals as well as the tasks necessary to accomplish the goals, including specific appointments, assignments, or activities for the adult/emancipated minor. In addition, Part 2, identifies the circumstances which impede attainment of the established goals and specifies the services needed to overcome the impediments.

The client must initial each change to the Self-Sufficiency Plan when it is made on the paper form. His initials indicate his agreement to the revisions.

The Self-Sufficiency Plan is a negotiated contract between the Department and the client. Even though it must be completed prior to the approval of the case, it is a working document and revisions are made when either the client or the Worker believes it is necessary. Frequent changes are expected as the client progresses toward his goal.

- 12) Section 13.9 of the West Virginia Income Maintenance Manual reads in part:

When a member of the benefit group does not comply with requirements found on his PRC, a sanction must be imposed unless the worker determines that good cause exists.

DEFINITION OF SANCTION

Sanctions are applied to WV Works cases in the form of check reductions and for the 3rd 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 and all subsequent offenses = 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. This is true even if the client complies after the notice is sent but before the sanction is effective.

Once a reduction in benefits or ineligibility is imposed, i.e., after expiration of the advance notice period, the reduction or ineligibility remains in effect for the pre-determined number of months, regardless of case status.

13) Section 13.10 of the West Virginia Income Maintenance Manual reads 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 requirements and/or adhere to his PRC requirements, the worker must determine the reason for such failure or refusal.

Failure or refusal without good cause results in imposition of a sanction. When the worker discovers the failure or refusal, a notice of adverse action must be issued.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period. Once a sanction has been imposed it cannot be stopped until the appropriate time has elapsed or the appropriate action is taken, whichever is later.

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 in school, training or an institution of higher learning. College is defined as a 2- or 4 year undergraduate degree program.
- S A single parent can prove that appropriate child care is unavailable for his child, age 6 or younger.
- S He is required to appear in court or for jury duty.
- S He is experiencing a family crisis such as:
 - ! 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 a 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.

- S A requirement of Social Services precludes participation for a specified period of time.
- S He refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.
- S He would be required to travel more than one hour each way to participate, unless it can be shown that local community standards exceed the one-hour limitation.

All good cause determinations must be recorded in RAPIDS. The recording must include the reason the worker did not or did impose a sanction.

VIII. CONCLUSIONS OF LAW:

- 1) 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.
- 2) The Claimant signed the Personal Responsibility Contract 04/03/2006 agreeing to report changes timely. She did not report her employment at [REDACTED] timely nor did she report she had worked at [REDACTED] at the time of review 10/10/2006.
- 3) There was no credible testimony or evidence provided at the hearing that would change the Department's determination.

IX. DECISION:

It is the finding of the State Hearing Officer that the Department is upheld in the decision to apply a sanction for the failure of the Claimant to adhere to her Personal Responsibility Contract. The action described in the notification letter dated October 19, 2006 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of February, 2007.

**Margaret M. Mann
State Hearing Officer**