



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 7, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 28, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to decrease your West Virginia Works benefits based on the application of a first-level program sanction.

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 West Virginia Works Program is based on current policy and regulations. Some of these regulations state that when a member of the benefit group does not comply with the requirements found on his or her Personal Responsibility Contract (PRC), a sanction must be imposed unless it is determined that good cause exists. Once a sanction has been imposed, it cannot be stopped until the appropriate action is taken or the appropriate time has elapsed, whichever is later. (West Virginia Income Maintenance Manual Section 13.9)

Information submitted at your hearing reveals that you failed to comply with the requirements of your PRC. Because you were unable to establish good cause for non-compliance, the Agency has correctly proposed that a first-level sanction be applied to your case.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to apply a first sanction to your West Virginia Works benefits.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Susan Ellison, FSS, DHHR

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

_____,

Claimant,

v.

Action Number: 06-BOR-3442

**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 March 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 February 28, 2007 on a timely appeal filed December 18, 2006.

It should be noted that West Virginia Works benefits have continued pending a hearing decision.

II. PROGRAM PURPOSE:

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

West Virginia 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
Susan Ellison, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 its proposal to reduce the Claimant's benefits through the West Virginia Works Program based on application of a first-level sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.25, 13.9 and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notices of Decision dated December 8, 2006
- D-2 West Virginia Income Maintenance Manual Sections 13.9 and 13.10
- D-3 Fair hearing information
- D-4 Case comments
- D-5 Medical Review Team decision received at [REDACTED] County DHHR on January 24, 2007

VII. FINDINGS OF FACT:

- 1) As a recipient of West Virginia Works benefits, the Claimant was to attend a 10 a.m. appointment on December 7, 2006 to complete a case redetermination, a medical reevaluation to determine incapacity/disability for the West Virginia Works Program, a Personal Responsibility Contract update for the West Virginia Works Program, and Emergency Assistance and Low Income Energy Assistance Program applications. This information is documented in Exhibit D-4.
- 2) The Claimant failed to attend the 10 a.m. appointment, but telephoned the Department at 10:45 a.m. December 7, 2006 to state that he had overslept. At that time, he inquired about rescheduling the appointment, but the Family Support Specialist informed him the appointment would not be rescheduled. She testified the appointment was not rescheduled because the Grievant failed to inform her prior to the appointment time that he would not be attending and she had no other vacant appointment slots that day.

- 3) The worker entered a first-level sanction against the Claimant based on his failure to meet West Virginia Works requirements and scheduled a good cause appointment for December 18, 2006. The proposed action is documented in a Notice of Decision dated December 8, 2006 (D-1), which states:

ACTION: Your WV WORKS will decrease from \$256.00 to \$150.00 effective 01/01/07. REASON: A first sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

- 4) The Claimant admitted that he overslept, but testified that he is only human. He testified that his daughter had not reset the alarm clock for him and he could not call prior to the appointment because he had no idea he would oversleep. The Family Support Specialist testified that a goal of the West Virginia Works Program is to help client achieve self-sufficiency and they are expected to attend appointments on time. The Claimant testified that he is being held to a higher standard than the Department's employees. He requested that a copy of his case comments be entered into the record as an exhibit on his behalf. He testified that case comments should show that he waited at the Department for about 45 minutes on an unknown date to be seen by a worker, but was informed after waiting that the worker was not present that day. The Family Support Specialist was unable to locate these comments in the RAPIDS computer system.
- 5) Policy found in Chapter 1.25, T of the West Virginia Income Maintenance Manual states that the Personal Responsibility Contract form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the West Virginia Works Assistance Group and the worker. Failure, without good cause, to adhere to the responsibilities contained in Part 1 of the PRC results in imposition of a sanction against the benefit group. Refusal or other failure, without good cause, to adhere to the self-sufficiency plan (Part 2 of the PRC) results in imposition of a sanction against the benefit group.
- 6) West Virginia Income Maintenance Manual Section 13.9:

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

1st Offense- 1/3 reduction in the check amount for 3 months.

2nd Offense- 2/3 reduction in the check amount for 3 months.

3rd Offense and all subsequent offenses-Ineligibility for cash assistance for 3 months or until compliance, whichever is later.

- 7) West Virginia Income Maintenance Manual Section 13.9 (D) states that once a sanction has been imposed, it cannot be stopped until the appropriate action is taken or the appropriate time has elapsed, whichever is later.
- 8) West Virginia Income Maintenance Manual Section 13.10 sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract.

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. College is defined as a 2- or 4-year undergraduate degree program.
- A single parent can prove that child care is unavailable for his child, age 6 or under.
- He is required to appear in court or for jury duty.
- He is experiencing a family crisis such as death or the life-threatening illness of a spouse, parent, child or stepchild, or domestic violence and/or the need to protect abused children makes participation impossible, dangerous or embarrassing and the client accepts a referral 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. However, once a sanction has been imposed, it cannot be stopped, until the appropriate time has elapsed, or the appropriate action is taken.
- A requirement 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 each way to participate.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates that when a member of a West Virginia Works Assistance Group does not comply with requirements found on his or her PRC, a sanction must be imposed unless the worker determines that good cause exists. For a first-level sanction, the Department imposes a one-third reduction in the West Virginia Works check amount for three months.
- 2) The Claimant testified that he had overslept and unintentionally missed his December 7, 2006 appointment concerning his West Virginia Works benefits.
- 3) Whereas the Claimant was unable to establish good cause for failing to attend the December 7, 2006 meeting, the Agency has correctly proposed the application of a first-level sanction to his West Virginia Works benefits.

IX. DECISION:

Based on information presented during the hearing and applicable policy, it is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to apply a first-level sanction to the Claimant's West Virginia Works benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of March, 2007.

**Pamela L. Hinzman
State Hearing Officer**