



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 9, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 6, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your West Virginia Works benefits based on the application of a third-level (3rd) 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. For a third offense and all subsequent offenses the sanction consists of ineligibility for cash assistance for 3 months or until compliance, whichever is later. 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 § 13.9)

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

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to apply a sanction in your WV WORKS case. A 3rd sanction will be applied to your WV WORKS case effective April 1, 2007.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Wanda Morgan, ESS, DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-3450

**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 8, 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 originally scheduled to convene on February 6, 2007 but was continued at the request of the Claimant and convened on March 6, 2007 on a timely appeal filed December 15, 2006.

It should be noted that WV WORKS benefits have continued pending the hearing.

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 mother
Wanda Morgan, FSS, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 terminate the Claimant's benefits and services through the WV WORKS Program based on the imposition of a 3rd sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 24.5 & 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated 12/11/06
- D-2 WV WORKS Personal Responsibility Contract (PRC) signed on 10/11/06
- D-3 WVDHHR Office of Family Support Participant Time Sheet for November 2006
- D-4 Case Comments from RAPIDS dated 10/13/06 to 1/11/07
- D-5 WVIMM Chapter 1.25, 13.9 & 24.5

VII. FINDINGS OF FACT:

- 1) On or about December 11, 2006, the Claimant was notified via a Notice of Decision (Exhibit D-1) that the Department was applying a third-level sanction to her WV WORKS benefits due to failure to comply with the requirements of her Personal Responsibility Contract (PRC). This notice states that benefits will stop effective January 2006. A "Good Cause" appointment was scheduled for 12/13/06 at 9:30 a.m.
- 2) The Department submitted Exhibit D-2, the Claimant's Personal Responsibility Contract, hereinafter PRC, which was signed by the Claimant on October 11, 2006. By signing the PRC, the Claimant agreed to the terms and conditions contained therein. The Department cited the Claimant's requirement to turn in participation time sheets by the 5th of each month to verify 35 hours per week of work/training participation.

- 3) The Department's representative presented testimony and documentation to demonstrate that she made efforts to make sure the Claimant returned her participation time sheet on December 5, 2006.

Exhibit D-4, Case Comments, includes the following entries on 12/5/06:

- "Attempted to contact _____ about time sheet. It appears that phone is not in service at this time. Tried to contact emergency contact number, no answer."
 - "Mailing a reminder to get signed time sheet in office."
- 4) Exhibit D-3 is the WVDHHR Office of Family Support Participation Time Sheet that was submitted by the Claimant to verify November 2006 WV WORKS work/training participation requirements. This document, according to the Claimant's PRC (Exhibit D-2), was to be returned to the Department on or before December 5, 2006. The Department noted that this document was date-stamped "received" by the Department on December 12, 2006.
- 5) The evidence reveals that the Claimant failed to appear for her "Good Cause" appointment scheduled on December 13, 2006 because the Notice of Decision was received late after being sent to her previous address. The Department, however, rescheduled the Good Cause appointment for December 15, 2006 and the determination was made that the Claimant did not have "Good Cause" for failing to turn in her time sheet by December 5, 2006. In addition to the participation time sheet being late, the Department noted that the Claimant failed to satisfy her participation requirement of 35 hours per week.
- 6) The Claimant acknowledged that she did not have enough hours documented to meet participation requirements in November 2006 and she indicated, more-or-less, that she was too busy to return her time sheet due to all of her commitments (school, work & family). While it was noted by the Claimant's mother that the participation time sheet (Exhibit D-3) states – "This time sheet is due in to the local DHHR office by the 5th working day of the following month," the Claimant's participation time sheet was not submitted before the 5th working day in December 2006 (December 7, 2006).
- 7) Policy found in Chapter 1.25, T, provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG 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.
- 8) West Virginia Income Maintenance Manual ' 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.

- 9) West Virginia Income Maintenance Manual ' 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.
- 10) West Virginia Income Maintenance Manual ' 13.10 sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. The Claimant's reason for non-compliance with her PRC does not meet good cause criteria.
- 11) West Virginia Income Maintenance Manual ' 13.9 (C) states that the imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing decision.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that 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.
- 2) When a member of the benefit group does not comply with the requirements found on his/her PRC, a sanction must be imposed unless the worker determines that good cause exists. A third-level sanction and all subsequent offenses result in ineligibility for cash assistance for 3 months or until compliance, whichever is later.
- 3) In this case, the Notice of Decision was mailed to the wrong address and while the Claimant received the notice, she was not provided reasonable notice to make her Good Cause appointment on December 13, 2006. The Department acknowledged this mistake and rectified the situation by allowing the Claimant an opportunity to establish Good Cause on December 15, 2006.
- 4) The Claimant failed to return her participation time sheet as directed in her PRC and she failed to establish Good Cause for non-compliance. Whereas the Claimant failed to establish Good Cause for not adhering to her PRC, the Agency has correctly proposed applying a 3rd sanction to her WV WORKS case.
- 5) In accordance with existing WV WORKS policy, the sanction will be effective April 1, 2006, the month following the Fair Hearing Decision.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the proposal of the Agency to apply a 3rd sanction to your WV WORKS benefits. This sanction will be effective April 1, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of March 2007.

Thomas E. Arnett
State Hearing Officer