



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 22, 2007

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 2007. Your hearing request was based on the Department of Health and Human Resources' action 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 action 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
Amy Samples, DHHR

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

____,

Claimant,

v.

Action Number: 07-BOR-478

**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 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 convened on February 8, 2007 on a timely appeal, filed December 28, 2006.

It should be noted here that the Claimant's benefits have been decreased. The hearing request was made timely but the Claimant opted not to have the benefits reinstated.

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

____, Claimant's Spouse

Amy Samples, Department Hearing Representative

Observing:

Fred Burns, Family Support Specialist, DHHR

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 12/18/2006
- D-3 Copy of Personal Responsibility Contract (PRC) completed 11/22/2006
- D-4 Copy of SPOKES attendance agreement dated 11/22/2006
- D-5 Copy of SPOKES referral dated 11/22/2006
- D-6 Copy of SPOKES timesheet for November 2006
- D-7 Copy of Participant Progress Report
- D-8 Section 1.25T of the West Virginia Income Maintenance Manual
- D-9 Section 24.3A of the West Virginia Income Maintenance Manual
- D-10 Section 24.4 of the West Virginia Income Maintenance Manual
- D-11 Section 13.9 of the West Virginia Income Maintenance Manual
- D-12 Copy of CMCC (Case Comments) dated from 11/22/2006 to 12/29/2006
- D-13 Copy of RAPIDS Screen CMIC for Mrs. _____. dated from 11/22/2006 to 01/23/2007
- D-14 Copy of RAPIDS Screen CMIC for Mr. _____. dated from 11/22/2006 to 12/18/2006
- D-15 Copy of Claimant's doctor's statement received 01/05/2007
- D-16 Copy of Claimant's doctor's statement received 02/02/2007

D-17 Department's Summary

Claimant's Exhibit:

C-1 Doctor Statements dated 12/05/2006 & 12/11/2006

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of WV WORKS.
- 2) The Claimant and her spouse completed an application on 11/22/2006. As required per policy, a Personal Responsibility Contract (PRC) was negotiated for both individuals. The Claimant's spouse reported he was still pursuing his disability and a Medical Review Team (MRT) application is still pending. Due to these reported medical issues, he was exempted from a work activity. Therefore, this two-parent household is looked at as a one-parent household for TANF participation purposes. The participation requirement for a one-parent household in this circumstance is thirty (30) hours per week. (Exhibit D-9)
- 3) The Claimant agreed to begin SPOKES class 11/27/2006 and to attend 30 hours weekly to meet participation requirement of 30 hours. The Claimant initialed and signed her PRC (Exhibit D-3) agreeing to do so. In addition, she signed the [REDACTED] SPOKES Attendance Requirement form on 11/22/2006 (Exhibit D-4). A referral (Exhibit D-5) was sent to the SPOKES instructor.
- 4) The Claimant began SPOKES class on 11/27/2006 as agreed. She attended 11/28/2006 although she had called from class reporting she was ill. She attended class on 11/29/2006. Based on the calculation for a prorated attendance requirement for November 2006, the Claimant's attendance for these three days met her prorated attendance requirement for November 2006. She did not attend class on 11/30/2006.
- 5) The Claimant failed to return to SPOKES class after 11/29/2006 as shown on her Participant Progress Report (Exhibit D-7). On 12/04/2006 the Claimant was absent again. The caseworker contacted the Claimant to determine the reason for her absence and discussed her agreement to attend SPOKES 30 hours per week. The case worker received a message from the Claimant's spouse on 12/06/2006 stating the Claimant was not in SPOKES class that day because she was ill but had a doctor's excuse to return to class on 12/08/2006. The caseworker discussed the case with her supervisor and attempted a return call the Claimant's residence. The individual who answered the phone stating the Claimant and her spouse had gone to her child's school. On 12/15/2006 the caseworker again discussed the situation with her supervisor and a decision was made to enter a sanction for failure to comply with the PRC and complete a case staffing in conjunction with the good cause appointment.
- 6) A notification letter was sent dated 12/18/2006 which reads in part: Your WV WORKS will decrease from \$369.00 to \$124.00 effective 01/01/07. Reason: A second 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 Claimant to meet the terms of the Personal Responsibility Contract by FAILING TO ATTEND AN

ASSIGNED ACTIVITY. A good cause interview was scheduled for 12/28/06 at 3:00. (Exhibit D-2)

- 7) The Claimant reported she had doctor's excuses for each day that she had missed class. She was notified through a message to her spouse that she needed to bring her doctor's excuses with her at the good cause interview. A good cause interview was held 12/28/2006. The Claimant did not provide the doctor's statements as she abruptly put them back in her purse. The Claimant did report falling on 12/24/2006 and hurting her back. The caseworker received a doctor's statement completed by the Claimant's doctor on 01/05/2007 dated by the doctor 01/04/2007 to show the Claimant's temporary incapacity of less than one month from 01/04/2007 to 01/08/2007 when she was to be reevaluated. (Exhibit D-15) This statement was not retroactive to December 2006. A more current doctor's statement has been provided and the Claimant is currently temporary incapacitated by this doctor's statement and exempt from an activity requirement at this time.
- 8) The Claimant provided doctor's excuses at the hearing for 12/05/2006 and being able to return to school on 12/07/2006 and for 12/11/2006 to 12/14/2006 and able to return to work on 12/15/2006. (Exhibit C-1)
- 9) The information from the SPOKES instructor shows the Claimant did not attend SPOKES class December 1, 4, 5, 6, 7, 11, 12, 13, 14, 15, 18, 19, 20 and 21. (Exhibit D-7)
- 10) Testimony from the Claimant revealed that she had excuses for December 1, 5, 6, 7, 11, 12, 13, 14 and 15. There are no classes on weekends and there was also a day there was no class due to snow. They were also closed for Christmas vacation. The days she actually missed without an excuse were December 4, 18, 19, 20, and 21. Testimony from the Claimant's spouse revealed that his wife's mother was ill during this time.
- 11) Testimony at the hearing revealed that the SPOKES classes run with the school calendar schedule. December 8 was a snow day and Christmas vacation started December 22. (Exhibit D-7)
- 12) 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.

- 13) 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.

14) 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 11/22/2006 agreeing to begin SPOKES class on 11/27/2006 for six weeks and complete 30 hours per week. The Claimant met this obligation in November 2006 but did not attend class in December 2006.
- 3) The Claimant failed to provide doctor's statements at the time of the good cause appointment 12/28/2006. Even with the statements provided at the hearing, the Claimant missed five days without an excuse.
- 4) The Claimant failed, without good cause, to adhere to the task of attending SPOKES class. There was no credible testimony or evidence provided at the hearing that would change the Department's determination.
- 5) The sanction will be imposed.

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.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of February, 2007.

**Margaret M. Mann
State Hearing Officer**