



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 29
Grafton, WV 26354
June 4, 2007

Joe Manchin III
Walker
Governor

Martha Yeager
Secretary

Dear Mr. and Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 12, 2007. Your hearing request was based on the Department of Health and Human Resources' action to apply program sanctions to your West Virginia Works Program 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 West Virginia 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 the requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless it is determined that good cause exists. First offense (sanction) results in a 1/3 reduction in the check amount for 3 months and Second offense (sanction) results in a 2/3 reduction in the check amount for 3 months. 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. (West Virginia Income Maintenance Manual §13.9)

The information which was submitted at the hearing failed to establish good cause for your failure to comply with the responsibilities/assignments agreed to in the December 29, 2005 and September 12, 2006 Personal Responsibility Contracts.

It is the decision of the State Hearing Officer to **uphold** the action of the Agency to apply sanctions as set forth in the December 11, 2006 and February 13, 2007 notifications.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

vs.

Action Number 07- BOR- 918

**West Virginia Department of Health & Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on May 29, 2007 for _____ and _____. 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 convened on April 12, 2007 on a timely appeal filed March 6, 2007.

II. PROGRAM PURPOSE:

The program entitled **West Virginia Works** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and 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 (Public Law 104-193). 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.

III. PARTICIPANTS:

_____, claimant

_____, spouse to claimant

Alicia Lyons, Family Support Specialist, Agency Representative

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in their action to apply program sanctions.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §1.25, 13.9, 13.10, 24.3, 24.5 & 24.14 C

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

A-1- Referral for Training/Services, 9/12/06
A-2- PRC, Self-Sufficiency Plan, 9/12/06
A-3- E-Mail, 11/17/06, Nutter to Livesay
A-4- Attendance Reports, 10/11/06- 11/17/06
A-5- Participant Time Sheet, 10/16- 10/31.
A-6- Notification, 12/12/06 (1st Sanction)
A-7- Information submitted and considered for good cause- 1st sanction 1/22/07
A-8- Oct and Nov 2006 calendars tracking claimant activity
A-9- Notification of 36 month evaluation, 1/19/07
A-10- PRC, Client Responsibilities, 12/29/05
A-11- Notification, 2/13/07 (2nd Sanction)
A-12- Case Comments, 9/12/06- 3/6/07
A-13- WVIMM 1.25, 13.9, 24.4

VII. FINDINGS OF FACT:

- 1) On March 6, 2007 a hearing requested by claimant in response to a February 13, 2007 notification (A-11). A hearing scheduled for and convened April 12, 2007.
- 2) During the hearing, exhibits as noted in Section VI above were presented.
- 3) Testimony was heard from the individuals listed in section III above. All persons providing testimony were placed under oath.
- 4) The agency provided testimony as follows: On September 12, 2006, claimant signed a Personal Responsibility Contract agreeing to begin _____ class at _____ Technical Institute on Monday, October 2, 2006 and attend 30 hours per week for four weeks. Claimant's wife was now receiving Medicaid Waiver 25 hours per week and he would no longer be needed for her in-home care. Due to a problem with car insurance claimant could not start at _____ on 10-2-07. Worker told claimant to begin the following week on October 10, 2006. Contacted claimant by phone on 10-5-06 to inform him to begin _____ on 10-9-06 instead (holiday not observed). He attended _____ on the 10th and was instructed by the teacher to return on Monday, October 16, 2006. Claimant officially began _____ class on October 16, 2006. Claimant attended _____ October 16, 17, 18,

19, and 30 and November 6, 13, and 16. In total, he attended a total of 8 classes out of the 20 classes required between 10-16-06 and 11-17-06. A one-third sanction was imposed on December 11, 2006, the reason being failure to meet participation hours of 30 hours per week for the month of November 2006 and general lack of attendance at _____ as was agreed on his PRC. He attended 2½ days out of total of 11 days in November. A good cause appointment for the 1/3 sanction was scheduled for December 18, 2006. Due to a report of car trouble a new appointment was given for 12-21-06. The good cause appointment was completed on 12-22-06. The only information provided was a handwritten list of his wife's doctor's appointments for October and November. Claimant given until 12-31-06 to document his illnesses and that he was with wife during her appointments during those two months. The agency received verification of appointments on 12-27-06. After comparing the appointment schedule with the _____ schedule, it was determined that there were still too many absences unaccounted for and therefore, the sanction would stand. On January 19, 2007, a 36-Month Case Staffing was scheduled February 2, 2007. Received a phone call from claimant's wife on 2-1-07 stating she had a doctor's appointment at the time the case staffing was scheduled. Worker rescheduled case staffing for 2-9-07. A reminder letter of this appointment, dated 2-1-07, was sent to client. Client did not show for this appointment. A 2/3 sanction was imposed for claimant's failure to attend a scheduled appointment with his worker as required by the Personal Responsibility Contract. The 2/3 sanction letter dated February 13, 2007 notified client of his good cause appointment scheduled for 2-23-07. Claimant contacted agency supervisor on 2-22-07 concerning the 2/3 sanction and WV Works check reduction. Told the supervisor that he was unaware he had an appointment earlier that month also stated that his wife was having surgery on the day of the good cause appointment. Worker rescheduled good cause appointment for 2-28-07. Appointment letters were sent to both physical address and mailing address on 2-23-07. On February 27, 2007, received phone call from claimant's wife concerning the sanction indicating that they thought everything was okay because claimant had been in the DHHR office 2 days prior to the appointment on 2-7-07 to apply for Emergency LIEAP and provide verification of earnings for the WV Works and the Food Stamp benefits. She asked to reschedule the good cause appointment to 4:00 p.m. on 2-28-07 instead of 3:15 p.m. due to a doctor's appointment. Worker rescheduled appointment. They attended the good cause appointment. Claimant stated that he thought that since he had come into the DHHR office on 2-7-07 that he didn't need to come in for the appointment on 2-9-07. Agency determined no good cause existed for missing the appointment and sanction remained.

5) The claimant provided testimony that he has a lot of relatives who he must help with transportation. This included his grandparents and his father- who died recently. Spouse has a number of medical issues and receives SSI and Adult/Disabled waiver benefits of care 124 hours per week (5 hours per day 5 days per week). Thought office visit on 2/7/07 took care of 2/9/07 appointment.

6) Exhibit A-10- Personal Responsibility Contract (PRC), Client Responsibilities, of 12/29/05 contains the claimant's signature and his agreement to "attend any meetings/appointments related to my eligibility for cash assistance and my self-sufficiency goals".

7) Exhibit A-2- Personal Responsibility Contract (PRC), Self-Sufficiency Plan, of 9/12/06 contains the claimant's signature and his agreement to "Begin _____ program at _____ Tech on 10-2-06 @ 8:30 am and attend 30 hours per week".

8) West Virginia Income Maintenance Manual §1.25 (T) states in part:

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.

9) West Virginia Income Maintenance Manual §13.9 reveals that:

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.

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.

11) West Virginia Income Maintenance Manual §13.9, A (NOTE) states that 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

VIII. CONCLUSIONS OF LAW:

1) Policy is clear in that when a member of the benefit group does not comply with the requirements found on his or her Personal Responsibility Contract a sanction must be imposed. Evidence reveals that the claimant failed to comply with requirements of his PRC on 2 occasions. He failed to adequately attend training in October and November 2005 and he failed to keep an appointment for a case evaluation in February 2007

2) Policy allows for a finding of good cause for non-compliance. The agency provided the claimant with good cause conferences on both of the aforementioned occasions of non-compliance. The agency failed to find good cause either time.

3) A finding of good cause is based on the circumstances of the case and situations constituting good cause are specifically outlined in current policy. Regarding the 1st sanction, the claimant offered only that he was responsible for transportation for a number of relatives. No additional information or documentation other than that provided to the agency was presented. The agency determination on this sanction is therefore affirmed as no persuasive evidence was presented which might negate their earlier determination.

4) Insofar as the 2nd sanction is concerned, the claimant offered here only the same

reason given the agency– that it was felt the 2/7/07 office visit negated the need to keep the 2/9/07 appointment. In light of the claimant's experience with the program and the documentation of contacts and multiple notifications to the claimant concerning this appointment and other issues in the past, it fails to be reasonable or credible that the importance of the 2/9/07 was not apparent to the claimant. Once again no convincing evidence was presented which might result in invalidation of the agency's imposition of a 2nd sanction.

5) A first sanction results in a 1/3 reduction in the check amount for 3 months and Second sanction results in a 2/3 reduction in the check amount for 3 months. The agency applied sanctions properly and in compliance with policy.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to **uphold** the determination of the agency in applying sanctions as set forth in the December 11, 2006 and February 13, 2007 notifications.

The claimant failed to establish during the hearing, in any convincing manner, that sufficient cause existed for his failure to comply in the instances in question. During the process in applying a first and second sanction, the agency provided the claimant multiple opportunities to comply with the terms of his PRC and thereafter establish cause for such failure to comply.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th day of June 2007.

RON ANGLIN
State Hearing Examiner