




State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 1, 2008



Dear Ms. 

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 30, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to impose a first level sanction against your WV Works benefits.

In arriving at a decision, the State Hearings 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 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. For a first offense, the penalty is a 1/3 check reduction for three months. 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).

The information which was submitted at your hearing revealed that you failed to comply with the assignments on your Personal Responsibilities Contract by the due date without good cause.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to impose a first level sanction on your WV Works benefits.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Pamela Brown, Family Support Specialist

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

██████████
Claimant,

v.

Action Number: 08-BOR-1069

**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 April 30, 2008 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 April 30, 2008 on a timely appeal, filed March 18, 2008.

It should be noted here that the claimant's benefits have not 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.

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
Pamela Brown, Family Support Specialist

Presiding at the Hearing was Kristi Logan, 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's decision to impose a first level sanction against Claimant's WV Works benefits was correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 13.9 and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Personal Responsibility Contract signed November 29, 2007 (part 2)
- D-2 Doctor's Statement from ██████████ dated November 29, 2007
- D-3 Personal Responsibility Contract signed February 4, 2008 (part 2)
- D-4 Notification Letter dated March 5, 2008
- D-5 Doctor's Statement from Dr. ██████████ dated March 18, 2008, Doctor's Statement from ██████████ dated March 24, 2008, Medical Appointment Card for March 24, 2008 for ██████████
- D-6 Letter History from Rapids Computer System from February 4, 2008 to April 17, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant had her Personal Responsibilities Contract (PRC) updated February 4, 2008. It read in part (D-3):

Specific Assignment/Activity

Reapply [for] SSI (Supplemental Security Income) due by March 1, 2008

Turn in new doctor's statement by February 28, 2008 due by February 29, 2008

Claimant had been previously exempted from participation in a work activity by a doctor's statement signed by [REDACTED] Physician's Assistant, of [REDACTED]. This statement was dated November 29, 2007 and read in part (D-2):

[REDACTED] is under is under care at for [sic] depression and is currently unable to participate in work for next three (3) months.

This doctor's excuse expired February 29, 2008 and Claimant's caseworker, Pamela Brown, requested a new doctor's statement, as indicated on the PRC, to further exempt Claimant from participation in a work activity.

- 2) On March 4, 2008 a first level WV Works sanction was proposed when Claimant had not provided Ms. Brown with a new doctor's excuse. Ms. Brown also verified with the Social Security Administration (SSA) that Claimant had not reapplied for Social Supplemental Income (SSI) since her denial in January 2008. A notification letter dated March 5, 2008 was issued and read in part (D-4):

Your WV Works will decrease from \$384 to \$257 effective April 1, 2008.

A first sanction is applied due to failure to comply with the requirements of the PRC. This sanction is being applied due to the failure of [REDACTED] [REDACTED] to meet the terms of the PRC by failing to complete an assignment.

We have scheduled a Good Cause interview for [REDACTED] on March 14, 2008 at 11:00. If this appointment is not kept, the sanction listed above will be applied to your benefits.

Claimant failed to attend the Good Cause appointment and the first level sanction was imposed on her WV Works benefits.

- 3) Claimant contacted Ms. Brown on March 18, 2008, after receiving a notification letter dated March 15, 2008 that advised her of the imposition of the first level WV Works sanction (D-6). Claimant requested a hearing. Claimant turned in a two doctors' excuses on March 24, 2008 and a copy of her appointment card for [REDACTED] [REDACTED] showing an appointment for March 24, 2008 (D-5). An excuse from Dr. [REDACTED] dated March 18, 2008 read:

Patient is to refrain from any strenuous work or activity until cardiac testing is complete.

The excuse from [REDACTED] dated March 24, 2008 read:

Client is under my care for depression and anxiety. Her symptoms interfere with her ability to sustain gainful employment at this time for the next three (3) months.

The first level sanction remained as Claimant did not turn in her doctors' excuses until after the Good Cause appointment.

- 4) Claimant testified that she never received the first notification letter dated March 5, 2008 that advised of the Good Cause appointment. She stated she is always having trouble with her mail. Claimant stated she told Ms. Brown during the PRC update on February 4, 2008 that she would not be going back to see her doctor until March 24, 2008 at [REDACTED] and would not be able to get another excuse until that time. She felt it unfair to be sanctioned for something she was unable to obtain until after the PRC due date.

Claimant testified that she had reapplied for SSI the end of February 2008. She stated SSA failed to send her a necessary form which she did not receive until the second week of March 2008. She had the form completed and mailed it back to the SSA the middle of March 2008. Claimant felt she had met this requirement of her PRC, although she had no documentation from SSA to verify this.

- 5) Ms. Brown testified that Claimant never mentioned a doctor's appointment for March 24, 2008 or she would not have made the due date for an excuse on the PRC before that time. She also reiterated that according to the SSA, Claimant was currently not undergoing the application process for SSI. It was also noted that Claimant signed the PRC on February 4, 2008 acknowledging the fact that a doctor's excuse was due by February 29, 2008.

- 6) West Virginia Income Maintenance Manual § 13.9 A states:

When a member of the AG or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC, a sanction must be imposed unless the Worker determines that good cause exists.

Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed. Sanctions are applied in the form of benefit reductions and, for the 3rd or subsequent offense, termination of benefits. The amount of the benefit reduction is a fixed amount and is determined as follows:

1st Offense: 1/3 reduction in the benefit amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months

2nd Offense: 2/3 reduction in the benefit 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 benefit amount the client would be eligible to receive, prior to recoupment; if it was not already reduced by 1/3.

3rd and All Subsequent: Ineligibility for cash assistance for 3 months.

- 7) West Virginia Income Maintenance Manual § 13.10 states:

Failure or refusal to comply, 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. When a letter is mailed scheduling the good cause interview, the Worker must allow no less than 7 calendar days.

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.

8) West Virginia Income Maintenance Manual § 13.10 D states:

Good Cause for Failure to Participate in WV Works:

An individual is experiencing a physical or mental health condition or he is suffering from a temporary debilitating injury for which a reasonable accommodation cannot be made. The individual's condition must be reevaluated within the time limits specified by his medical practitioner or at least quarterly.

VIII. CONCLUSIONS OF LAW:

1) Claimant was aware that she was required to provide a doctor's excuse to exempt her from participation in a WV Works activity and to reapply for SSI and the dates of which those assignments were due. As dictated by policy, Ms. Brown proposed a first level WV Works sanction when Claimant failed to comply with her PRC and later imposed said sanction when Claimant failed to attend her Good Cause appointment.

Although Claimant eventually did provide a doctor's excuse as indicated on her PRC, it was not provided to Ms. Brown until March 24, 2008, after the Good Cause appointment and the sanction was imposed. Claimant also failed to provide any documentation to Ms. Brown that she was currently in the application process for SSI.

2) Claimant failed to fulfill the requirements on her PRC or provide Good Cause within the allowable time frames.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to impose a first level sanction on Claimant's WV Works benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of May, 2008.

**Kristi Logan
State Hearing Officer**