

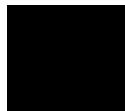


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 7, 2008



Dear 

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 7, 2008. Your hearing request was based on the Department of Health and Human Resources' closure of your WV Works benefits due to a third-level sanction.

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 Program is based on current policy and regulations. Some of these regulations state as follows: Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC (Personal Responsibility Contract) 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 (West Virginia Income Maintenance Manual, Chapter 1.25.T).

The information submitted at your hearing revealed that you did not comply with the requirements of your Personal Responsibility Contract (PRC) and that you failed to establish good cause.

It is the decision of the State Hearings Officer to **uphold** the action of the Department to close your WV Works benefits due to a sanction.

Sincerely,

Todd Thornton
State Hearings Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Emogene Davis, Family Support Specialist

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

██████████
Claimant,

v.

Action Number: 08-BOR-1612

**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 November 7, 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 August 7, 2008 on a timely appeal, filed June 23, 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
██████████ Claimant's mother
Emogene Davis, Family Support Specialist

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

All persons offered testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct to impose a sanction terminating WV Works benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 24.4.D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Works – Personal Responsibility Contract (DFA-PRC-1) dated March 11, 2008
- D-2 Appointment letter dated March 27, 2008
- D-3 Notification of WV Works closure due to sanction and Good Cause appointment, dated April 28, 2008
- D-4 West Virginia Income Maintenance Manual, Chapter 24.4.D
- D-5 West Virginia Income Maintenance Manual, Chapter 1.25.T
- D-6 West Virginia Income Maintenance Manual, Chapter 13.9

Claimant's Exhibit:

- C-1 Doctor's excuse dated May 13, 2008

VII. FINDINGS OF FACT:

- 1) On April 28, 2008, the Department notified the Claimant that her WV Works check would be closed due to a third sanction, and scheduled a Good Cause appointment with the Claimant (Exhibit D-3). This notice states, in pertinent part:

1. ACTION: Your WV WORKS will stop. You will not receive this benefit after May 2008.

2. REASON: A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

The notice additionally specifies the PRC violation, stating, in pertinent part:

This sanction is being applied due to the failure of [REDACTED] [sic] [REDACTED] to meet the terms of the Personal Responsibility Contract by FAILING TO ATTEND AN ASSIGNED ACTIVITY.

- 2) The Department worker and the Claimant completed a Personal Responsibility Contract (PRC) on March 11, 2008 (Exhibit D-1). This agreement lists specific assignments or activities for the Claimant as follows, in pertinent part:
 - 1) Keep all appts [sic] w/ DHHR [sic] HV [sic] /office
 - 2) Tabe test DHHR 3/14/08 10:15 AM
 - 3) Start Excel 3/17/08 – 9AM – 5PM – attend FT [sic] Hrs [sic] M [sic] thru F [sic]

The form additionally lists several statements, including:

- **I understand** that if I do not cooperate/participate with all the assignments/activities listed above that I will be penalized.

- 3) Testimony and evidence from the Department revealed that the Claimant was assigned to complete the Test of Adult Basic Education (TABE) on March 14, 2008. This appointment was later rescheduled for April 11, 2008 (Exhibit D-2). The Department placed a third sanction against the Claimant's case for failure to attend this appointment to complete the TABE.
- 4) The West Virginia Income Maintenance Manual, Chapter 13.9 (Exhibit D-6) on WV Works Sanctions states, in pertinent part:

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.

- 5) An appointment to allow the Claimant to establish good cause for failure to complete the TABE was scheduled for May 2, 2008 (Exhibit D-3). Testimony from the Department confirmed that the Claimant failed to attend this Good Cause interview. For this reason, the Department imposed the sanction without further consideration. Because the sanction was a third-level sanction, it closed the WV Works benefit.

- 6) The West Virginia Income Maintenance Manual, Chapter 13.9.A (Exhibit D-6) defines the sanction levels as follows:

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
Offenses = Ineligibility for cash assistance for 3 months.

- 7) The Claimant and her mother testified that the Claimant was very ill between March 2008 and May 2008. The Claimant provided a doctor's excuse (Exhibit C-1) dated May 13, 2008, which stated that the Claimant was under the care of [REDACTED], MD, from April 15, 2008 to May 28, 2008.

- 8) The West Virginia Income Maintenance Manual, Chapter 13.10 states, in pertinent part:

13.10 GOOD CAUSE FOR FAILURE TO PARTICIPATE FOR WV WORKS

All mandatory Work-Eligible Individuals must be placed into a relevant and a current component for tracking and monitoring purposes on approval date. The participant must remain in that component whether or not they are working, cooperating, or sanctioned until either the case is closed or the Case Manager and participant agree to change the component. Not meeting participation requirements or being sanctioned are not reasons to disenroll the participant from their assigned component(s).

Some reasons for granting good cause for temporarily not meeting participation requirements are life events or problems such as, but not limited to:

- The death of a spouse, parent, child, or stepchild.

- In accordance with the Family and Medical Leave Act (FMLA) of 1993, an acute, life threatening illness of a spouse, parent, or child that requires the client's immediate attention. This does not include individuals who are exempt from participation due to caring for a disabled family member as outlined in section 13.8.

- The minimum suitability standards for the specific activity are not met. See Sections 24.5 – 24.13 for minimum requirements. If none are listed for the activity, the Worker must determine if the activity placed unreasonable requirements on the client. Individuals granted good cause for this reason must be scheduled an appointment or home visit to review the situation and possible PRC update.

The Worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The Worker has considerable discretion in imposing a sanction. The Worker may determine that the requirement was inappropriate based upon additional assessment. An appointment to update the PRC and place the individual in another component must be scheduled as soon as possible. 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.

- The parent, an included non-parent caretaker, or a non-recipient Work-Eligible Individual 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. The PRC must be updated and these individuals should be placed in the VT, AB, or CL components as soon as possible.

- 9) The Department worker testified that the Claimant did not provide the doctor's excuse (Exhibit C-1) prior to the Good Cause interview, failed to attend the Good Cause interview, and did not call the Department worker to state she was ill and unable to attend. The Claimant and her mother testified that the Claimant was sick, but did call and left a voice mail message stating that she could not attend her Good Cause interview. The Department worker testified that if a voice mail message was left for her, she did not receive it.

VIII. CONCLUSIONS OF LAW:

- 1) The West Virginia Income Maintenance Manual, Chapter 1.25.T, states, in pertinent 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.

- 2) The Department clearly showed the stated PRC expectations for the Claimant. Undisputed testimony confirmed that the Claimant failed to complete a PRC assignment – TABE testing – and failed to attend a Good Cause interview offered by the Department to explain her inability to complete the assignment. Although the Claimant provided testimony and evidence that she was ill, the dates documented in her evidence are after her assignment date and the date of the documentation itself was after the Good Cause interview date. The Claimant may have called the Department worker; however, the Claimant failed to show any evidence useful to establish good cause, either presently or at the time of the missed Good Cause interview.

IX. DECISION:

It is the decision of the State Hearings Officer to **uphold** the action of the Department to apply a third-level sanction terminating the 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 _____ Day of November, 2008.

Todd Thornton
State Hearings Officer