



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
PO Box 6165  
Wheeling, WV 26003

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 26, 2008



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 18, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your West Virginia Works benefits (cash assistance) based on the application of a first (1<sup>st</sup>) level 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 first offense, the sanction consists of 1/3 reduction in the check amount for 3 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 § 13.9)

The information submitted at your hearing demonstrates that you failed to comply with the requirements on your PRC. Specifically, you failed to provide a physician's assessment form by June 23, 2008.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department in applying a first level sanction in your WV WORKS case.

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Lisa Gongola, FSS, DHHR

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

██████████  
**Claimant,**

v.

**Action Number: 08-BOR-1949**

**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 September 18, 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 hearing convened on September 18, 2008 on a timely appeal filed August 21, 2008.

It should be noted that the WV WORKS sanction has been imposed and the benefits have been reduced pending the result of 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  
Lisa Gongola, FSS, DHHR

Presiding at the Hearing was Melissa Hastings, 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 action to reduce the Claimant's benefits and services through the WV WORKS Program based on the imposition of a 1<sup>st</sup> sanction.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9 & 24.4

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Personal Responsibility Contract dated June 10, 2008
- D-2 Notice of Decision dated July 2, 2008
- D-3 WV Income Maintenance Manual section 1.25
- D-4 WV Income Maintenance Manual section 13.9
- D-5 WV Income Maintenance Manual section 24.4

**VII. FINDINGS OF FACT:**

- 1) On June 10, 2008, the Claimant signed a Personal Responsibility Contract (D1), hereinafter PRC, agreeing to the following:

██████████ to have doctor complete assessment form and return by 6-23-08.

- 2) Testimony provided by the department's representative indicates Claimant failed to provide the requested medical assessment by June 23, 2008 and did not contact her prior to that date indicating a problem in obtaining the report or to see if the report had been received. A Notice of Decision (D2) was issued on July 2, 2008 stating the following:

ACTION: Your WV WORKS will decrease from \$384.00 to \$257.00 effective August 1, 2008.

REASON: A first sanction is applied due to failure to comply with the requirements of

The Personal Responsibility Contract (PRC)

This notice also scheduled the Claimant for a good cause interview on July 11, 2008 at 9:00.

- 3) The Claimant's Personal Responsibility Contract (D1) signed on June 10, 2008 indicates the following:

This plan was developed by my Worker and me, based on my own life situation.

I understand/agree to cooperate/participate with all assignments/activities listed above.

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

- 4) Testimony received from the Claimant indicates that when he was given the medical assessment form by the worker on June 10, 2008 he had an appointment with his physician the following week. He took the form to his physician and requested that he complete it. The physician took the form, placed it into the Claimant's file and agreed to complete it. Claimant assumed the physician would send the report to the department. Acknowledges that he did not follow up with his worker to determine if the form was sent in by his physician within the time frame required.
- 5) Claimant initially claimed during the hearing that when he received the notice of decision (D2) he came in for the good cause appointment on July 11. Claimant's testimony was that he saw another worker and that worker directed him to take the TABE testing going on that day. Upon review of his file, however it was determined that the date he came in was July 17 not July 11. The TABE test he took was dated July 17.
- 6) Testimony received from the department's representative and the claimant indicates that Claimant called his worker on or about July 8, 2008 concerning the notice of decision he'd received. The worker informed him that she had not received the required medical assessment by June 23, 2008. She also advised the claimant that it was his responsibility to see that the form was in by the required date and if he had relied on the physician to mail the form into the department, he should have checked prior to the due date to be sure it had been received. A decision was made that good cause did not exist for his failure to complete the required activity on the Personal Responsibility Contract.
- 7) Evidence does show that the claimant did secure another medical assessment form from the worker and when he had an appointment on July 15, 2008 with his physician he had the form completed and he brought it into the office the same day.
- 8) Policy found in Chapter 1.25, T, of the West Virginia Income Maintenance Manual provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG (assistance group) 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.

- 9) West Virginia Income Maintenance Manual section 13.9 states:  
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.  
1<sup>st</sup> Offense- 1/3 reduction in the check amount for 3 months.  
2<sup>nd</sup> Offense- 2/3 reduction in the check amount for 3 months.  
3<sup>rd</sup> Offense and all subsequent offenses - Ineligibility for cash assistance for 3 months or until compliance, whichever is later.
- 10) West Virginia Income Maintenance Manual 24.4 states:  
Failure without good cause to keep appointment to initiate or continue the assessment process indicates a failure/refusal to cooperate or participate. All Work-Eligible Individuals must be scheduled for assessment testing unless one of the exceptions exists.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy states that failure, without good cause, to adhere to the responsibilities contained in Part 1 or Part 2 of the PRC results in imposition of a sanction against the benefit group. A sanction must be imposed unless the worker determines that good cause exists.
- 2) The evidence reveals that the Claimant signed a properly completed Personal Responsibility Contract acknowledging his responsibility to provide a medical assessment form completed by his Physician by June 23, 2008. In addition the Claimant signed an acknowledgement of the penalties involved for failure to comply with the requested information.
- 3) Policy provides for a good cause determination by the worker when a recipient fails to comply with activities listed on the Personal Responsibility Contract. In this case the worker made a well reasoned decision concerning the claimant's claim of good cause. The claimant's failure to follow up with the worker and make sure the information required was received prior to or on the due date is indicative of failure to cooperate. Relying on the physician to provide the information does not relieve the Claimant of the responsibility to assure that the information is received within the required time frames. Had he assumed his responsibility and followed up with the worker prior to or on the due date and requested additional time to contact the physician a penalty could have been avoided.
- 4) Policy is clear that unless the client can show good cause for non-compliance, the sanction is imposed. This is true even if the the client complies after the notice is sent but before the sanction is effective. In this case the claimant did provide the required medical assessment but it was well after the initial request date and following notice of adverse action.

### **IX. DECISION:**

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the ruling of the State Hearings Office to **uphold** the Agency's proposal to apply a first level sanction to your WV WORKS benefits.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 26<sup>th</sup> Day of September, 2008.**

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**Melissa Hastings  
State Hearing Officer**