



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 27, 2008



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 18, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your West Virginia Works benefits based on the application of a second program 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 fails to 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 second offense, the sanction consists of a 2/3 reduction in the amount of the assistance check for three months. No sanction may be imposed for failing to adhere to any provision that was not specifically addressed on the PRC at the time the failure occurred. (West Virginia Income Maintenance Manual Sections 1.25 and 13.9)

While information submitted at your hearing indicates that you did not attend a job readiness class as specified on your Personal Responsibility Contract, you have established good cause for failure to attend due to lack of transportation.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to apply a second sanction to your West Virginia Works case.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Mary Hall, FSS, DHHR

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

██████████
Claimant,

v.

Action Number: 07-BOR-2303

**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 March 27, 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 March 18, 2008 on a timely appeal filed October 1, 2007.

It should be noted that the Claimant requested continued benefits pending a hearing decision, but has since requested that her West Virginia Works case be closed.

II. PROGRAM PURPOSE:

The program entitled West Virginia 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
Mary Hall, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 proposal to reduce the Claimant's benefits and services through the West Virginia Works Program based on the application of a second sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.25, 13.9, 13.10 and 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 IG-BR-29 Hearing/Grievance Record Information
- D-2 Fair Hearing Request
- D-3 Notice of Decision dated September 17, 2007
- D-4 West Virginia Works Personal Responsibility Contract signed August 21, 2007
- D-5 West Virginia Income Maintenance Manual Sections 1.25T, 24.4D and 13.9
- D-6 Department's hearing summary

VII. FINDINGS OF FACT:

- 1) Evidence indicates that the Claimant signed a West Virginia Works Personal Responsibility Contract (PRC) (D-4) on August 21, 2007. The contract states that the Claimant must "try to make arrangements to attend SPOKES or notify if unable to complete." The SPOKES class is a five-day-per-week class lasting about eight weeks.
- 2) The Claimant was provided a one-week advance in transportation funds to begin the class, which the PRC states was slated to begin on September 4, 2007. The Family Support Specialist (FSS) testified that the Department telephoned the Claimant's mother on August 29, 2007 and left a message to remind the Claimant of the class.
- 3) The FSS testified that she later spoke with the SPOKES class instructor and learned the Claimant had never attended the class.

- 4) The worker applied a second program sanction and sent the Claimant a Notice of Decision (D-3) on September 17, 2007 which states:

ACTION: Your WV WORKS will decrease from \$301 to \$80 effective 10/01/07.

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

Income from self-employment has increased.

Earned income increased.

This letter states that a good cause appointment was scheduled for September 20, 2007 and the worker indicated the Claimant failed to attend the good cause appointment. *Pursuant to West Virginia Income Maintenance Manual Section 13.10, the Department must provide at least seven days notice to a West Virginia Works recipient prior to a good cause appointment. The good cause notification in this case does not meet the notice requirement. Therefore, the Hearing Officer will address the issue of good cause in this decision as inadequate notice has rendered the matter of non-attendance at the appointment moot.*

- 5) The Claimant testified that she did not have any means of transportation to the SPOKES class. While she was provided a \$30 advance reimbursement for transportation costs, she testified that she could not find anyone to drive her eight miles to the class in the morning and pick her up at a designated time. She testified that she was living at [REDACTED] assisting a disabled individual and did not know anyone else in that area.

The Claimant testified that another FSS- who does not normally work in the [REDACTED] County office- had completed her PRC and indicated that she should try and attend the class. The Claimant said the worker told her she would understand if the Claimant could not attend the class in light of her transportation issues.

The Claimant contended that she informed her worker (Ms. Hall) on several occasions that she would be unable to attend the class. She stated that the worker told her she would be sanctioned if she failed to attend. The worker, however, testified that the Claimant called and left her messages regarding the class, but she believes the messages were left after the sanction was imposed. She also stated that the Claimant had talked to her supervisor about the class and she believes- but is not 100 percent certain- that the conversation occurred after the sanction was placed.

- 6) Policy found in West Virginia Income Maintenance Manual Section 1.25, T (D-5), provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV Works 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.

7) West Virginia Income Maintenance Manual Section 1.25, T (D-5):

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.

8) West Virginia Income Maintenance Manual Section 13.9 (D-5):

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.

3rd Offense and all subsequent offenses-Ineligibility for cash assistance for 3 months or until compliance, whichever is later.

9) West Virginia Income Maintenance Manual Section 13.10E cites lack of transportation as a potential reason for which good cause can be granted. Section 13.10 also states, in pertinent part:

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. This period begins the day following the date the letter is requested in RAPIDS, or the day following the date a manual letter is sent.** (emphasis added). If the letter is hand delivered, case comments must be made indicating the date the letter was given to the client. If the appointment is scheduled for a date prior to the 7 calendar days, the participant and the Worker must agree on the appointment date. See Section 6.3, Items D and E. A Worker generated letter from RAPIDS or a manual letter, OFS-WV WORKS-NL-1 is used.

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.

- 10) West Virginia Income Maintenance Manual Section 24.4D (D-5) states that the Claimant's Self-Sufficiency Plan "must be specific enough to provide direction for the client and must reflect careful analysis of the client's needs and potential. It must also be flexible enough to change as opportunities and situations warrant."

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the West Virginia Works benefit group fails to comply with the requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless the worker determines that good cause exists. The penalty for a second offense is a 2/3 reduction in the assistance check amount for three months. No sanction can be imposed for failing to adhere to a provision which is not specifically addressed on the Personal Responsibility Contract.
- 2) While the Claimant failed to attend SPOKES class, the Self Sufficiency Plan on her PRC states that she should "try to make arrangements to attend" the class and notify her worker if she is unable to do so. Because the language used in the PRC does not specifically state that the Claimant must attend the class- but merely states that she should "try" to make arrangements to attend it- the level of her requirement is not clearly defined. The Claimant testified that she made contact with her worker- prior to the imposition of the sanction- regarding her lack of transportation. The worker could not testify with certainty about the Department's dates of contact with the Claimant. Although the dates of contact are points of contention, it is undisputed that the Claimant attempted contact with the Department at some point in regard to her transportation problems.
- 3) Because the PRC directive regarding SPOKES class attendance is vague and ambiguous, the Department's proposal to apply a second sanction to the Claimant's West Virginia Works benefits is without merit.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to apply a second sanction to the Claimant's West Virginia Works benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of March 2008.

**Pamela L. Hinzman
State Hearing Officer**