



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

January 4, 2008



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 7, 2007. Your hearing request was based on the Department of Health and Human Resources' action to terminate your assistance check under the WV Works Program due to imposition of a third-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 WV 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 third offense and all subsequent offenses, the sanction consists of ineligibility for cash assistance for three months or until compliance. (West Virginia Income Maintenance Manual Section 13.9)

The information which was submitted at the hearing revealed that you failed to cooperate with WV Works Program requirements by failing without good cause to report for a scheduled appointment with Vocational Rehabilitation Services on August 22, 2007.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your assistance check under the WV Works Program due to imposition of a third-level sanction. The sanction will be effective October 2007 through December 2007.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kim Cox, DHHR

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

Claimant,

v.

Action Number: 07-BOR-2329

**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 December 7, 2007 for [REDACTED]. 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 December 7, 2007 on a timely appeal filed October 18, 2007.

It should be noted that WV Works benefits have been terminated.

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
Kim Cox, 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 correctly terminated the claimant's assistance check through the WV Works Program based on a third-level 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 WV WORKS Personal Responsibility Contract dated 03/05/07
- D-2 Letter from Division of Rehabilitation Services dated August 13, 2007 to Claimant
- D-3 Notice of Decision dated 08/28/07 to Claimant
- D-4 WV Department of Health and Human Resources Disability/Incapacity Evaluation dated 01/22/07
- D-5 WV Income Maintenance Manual Section 1.25
- D-6 WV Income Maintenance Manual Section 24.4
- D-7 WV Income Maintenance Manual Section 13.9

Claimant's Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The Claimant signed a Personal Responsibility Contract (PRC) on 03/05/07 (D1) Responsibilities to which the Claimant agreed included the following:

Keep all scheduled appts with DHHR for testing, visits, placements and etc.

Report all household changes within 10 calendar days to DHHR.

Must cooperate with all aspects of Vocational Rehabilitation.

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

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

- 2) Testimony from the department's representative indicates Claimant failed to report for a scheduled appointment with the Division of Rehabilitation Services evaluator on August 22, 2007 at 1:30 pm (D2). Testimony also indicates Claimant's caseworker and the Rehabilitation Services evaluator attempted calling Claimant on August 21, 2007 to remind her of the appointment. Both left messages on Claimant's answering machine. When Claimant failed to report for the appointment testimony indicates that the department's caseworker called both the Claimant and Claimant's mother's home and left messages on their answering machines. Claimant has been determined to be incapacitated by the Medical Review Team (D4) and is to be reevaluated in February 2008. As part of the reevaluation the Medical Review Team has requested a report from the Division of Rehabilitation Services. This was the purpose of the scheduled appointment on August 22, 2007.
- 3) A Notice of Decision dated August 28, 2007 was issued to the Claimant (D3) stating the following:

Your WV WORKS will stop. You will not receive this benefit after September 2007.

A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).
- 4) Testimony from the Department Representative indicates that a good cause appointment was scheduled for the Claimant on 09-04-2007. Claimant failed to report for this appointment nor did she call the caseworker concerning the appointment.
- 5) Testimony received from the Claimant indicates she did not receive either the appointment letter with the Division of Rehabilitation Services nor the Notice of Decision issued by the department. Claimant changed her address from a post office box to her residence during the summer but was unsure of the date. Her testimony indicates she did not notify the agency of this change. Was also unsure whether she completed a forwarding order for her mail. When Claimant discovered her assistance check had been terminated she contacted her caseworker and when advised of the reason for termination made arrangements to meet with the Rehabilitation Services evaluator to complete the required testing. She completed one half of the testing in either September or October. She is awaiting another appointment to complete the rest of the testing.
- 6) Policy found in West Virginia Income Maintenance Manual Section 1.25T (D-5) states that the Personal Responsibility Contract (DFA-PRC-1) is a negotiated contract

between the adult or emancipated minor members of the West Virginia Works assistance group and the worker.

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 benefit group. 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.

7) West Virginia Income Maintenance Manual Section 13.9 (D-7):

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.

Unless the client shows good cause for non-compliance, the sanction is imposed.

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.

8) West Virginia Income Maintenance Manual Section 13.9 states that 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.

9) WV Income Maintenance Manual Section 13.10 states in part:

“If a parent or other caretaker relative included in the payment quits or refuses employment within the 30 day period prior to the date of application or when the client fails or refuses to meet his work requirement and/or adhere to his PRC requirements, the Worker must determined the reason for such failure or refusal.

Failure or refusal to comply, without good cause, results in imposition of a sanction.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period. See item 13.8, A.

The client has good cause for failure to participate when:

-The parent or included non-parent caretaker 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.....

- A single parent can prove that appropriate child care is unavailable for his child, age 6 or younger.

- He is required to appear in court or for jury duty.

- He is experiencing a family crisis such as, but not limited to:

Death of his spouse, parent, child, or stepchild.

A life-threatening illness of a spouse, parent or child requires the client's immediate attention.

Domestic violence and/or the need to protect abused children makes participation impossible, dangerous, or embarrassing and the client accepts a referral to Social Services or a Domestic Violence center for assistance.

The minimum suitability standards for the specific activity are not met.....

Based on knowledge of the client and his life circumstances, the Worker determines that the client has not met the requirement, but has complied to the best of his ability, understanding of the requirement, understanding of the sanction process and/or level of motivation. The Worker has considerable discretion in imposing a sanction. The Worker may determine that the requirement was inappropriate based upon additional assessment. 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.....”

-A requirement of the Office of Social Services precludes participation for a specified period of time.

-He refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.

-He would be required to travel more than one hour round trip to participate, unless it can be shown that local community travel standards exceed the one-hour limitation.

10) WV Income Maintenance Manual section 24.4 (D-6) states:

Additional testing, assessments, and evaluation may be necessary for Work-Eligible WV WORKS participants with physical and/or mental disability issues in the order to determine appropriate placements in training and employment. Under a contracted service with DHHR, referrals to the DRS for vocational evaluations must be made for all WV WORKS participants who meet one or more of the following conditions:

- Participants determined unable to work for more than six months due to a physician's statement;
- Participants determined incapacitated for WV WORKS by MRT and a referral to DRS is indicated on the ES-RT-3.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the benefit group does not comply with requirements found on their PRC, a sanction must be imposed unless the worker determines that good cause exists. 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.
 - a. Evidence reveals that the Department imposed the third-level sanction to the Claimant's case as a result of failure to report for a scheduled appointment with a vocational evaluator from the Division of Rehabilitation Services on August 22, 2007. The matter of keeping appointments and cooperation with the Division of Rehabilitation Services were specifically address on the Personal Responsibility Contract signed by the Claimant on March 5, 2007.
- 2) Claimant's testimony regarding failure to receive either the appointment notice with the Division of Rehabilitation Services or the subsequent Notice of Decision from the department is plausible. The cause of her failure to receive these notices however rests with the Claimant. The PRC signed by her on March 5, 2007 specifically indicates that one of the Claimant's responsibilities was to notify the department of any household changes within 10 days. Changing one's address from a post office box to a residence address would be considered one of these reportable changes.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Agency to impose a third-level sanction to the Claimant's case and to terminate the WV WORKS assistance check. The sanction is effective October 2007 through December 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of January, 2008

**Melissa Hastings
State Hearing Officer**