



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 8, 2008



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 18, 2007. 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 on two occasions to report for scheduled TABE testing.

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. This sanction will begin effective February 1, 2008.

Sincerely,

Melissa Hastings  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Joyce Wilson, FSS, DHHR

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

██████████  
**Claimant,**

v.

**Action Number: 07-BOR-2340**

**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 18, 2007 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 December 18, 2007 on a timely appeal filed October 19, 2007. Note: This hearing was originally scheduled December 4, 2007 but was continued at request of the Claimant due to his illness.

It should be noted that the WV WORKS benefits have continued at the pre-sanction amount 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  
██████████ Claimant's Fiance  
Joyce Wilson, 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 proposal 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 September 17, 2007
- D-2 Personal Responsibility Contract dated October 4, 2007
- D-3 Physician's Summary received October 17, 2007 signed by Dr. ██████████ (sic)
- D-4 Notice of Decision dated September 28, 2007
- D-5 WV Income Maintenance Manual section 1.25
- D-6 WV Income Maintenance Manual section 13.9
- D-7 WV Income Maintenance Manual section 24.4

**VII. FINDINGS OF FACT:**

- 1) On September 17, 2007, the Claimant signed a Personal Responsibility Contract (D1), hereinafter PRC, agreeing to the following:

Take the TABE test at the DHHR on September 27, 2007 at 10:00

- 2) Evidence provided by the department's representative indicates Claimant failed to report for this appointment. A Notice of Decision (D4) was issued on September 28, 2007 stating the following:

ACTION: Your WV WORKS will decrease from \$301.00 to \$201.00 effective

November 1, 2007.

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 October 4, 2007 at 9:30.

- 3) Evidence shows that Claimant did report for the good cause interview on October 4, 2007. During the interview Claimant indicated that he was unable to complete the testing due to his bipolar disorder. As a result, a new PRC (D2) was completed for the Claimant. On this PRC the following items were listed:

Take the TABE test November 29, 2007 at DHHR at 10:00

Get a doctor's statement from Dr. [REDACTED] (sic) that says whether or not you can Work and if you can take a TABE test

Claimant signed and dated the PRC on October 4, 2007 acknowledging 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) A Physicians Summary, DFA-RT-8a (D3) was given to the Claimant for his physician to complete. On this summary the department's worker specifically notes under Employment Limitations: Can [REDACTED] take a TABE test?
- 5) The Physician's Summary was received in the DHHR office on October 17, 2007. The question of taking the TABE test was not addressed by the physician on the report. The report does indicate that Claimant has a diagnosis of bipolar disorder with a prognosis of poor to fair. The physician does state that Claimant could not work at all for at least one year.
- 6) Testimony received from the department's representative indicates that Claimant failed to report for the TABE testing that was scheduled on November 29, 2007.
- 7) Claimant's testimony indicates that he failed to report for the first TABE testing because his fiancé was ill and he could not leave her. For the second scheduled testing his own personal illness kept him from reporting for the testing. Claimant indicates that his bipolar disorder makes it difficult for him to take tests in a group setting. Does not know why his physician failed to address this on his summary. Claimant's testimony indicates that he would take the TABE test if he could take it in a setting where he would be alone. The department's representative agreed to arrange this for Claimant and advised him of the next scheduled date (December 27, 2007 at 10:00) for the testing. Notice was received from the department's representative on December 27, 2007 that Claimant failed to report for this rescheduled testing and did not contact her with a reason.

- 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 failed to appear for two (2) scheduled appointments for TABE testing. When the first appointment was missed and the Claimant reported for his good cause appointment, the worker scheduled him for testing a second time. During the appointment when the Claimant indicated an issue with taking the TABE testing due to his mental illness, the worker provided him with a physician's summary specifically addressing the issue of taking the TABE test. When the physician summary was returned, this question was not addressed by the physician. Claimant failed to report for the second scheduled TABE testing. During this hearing Claimant again raised the issue of taking a test in a group setting. The department advised him of the next scheduled date for TABE testing and indicated a willingness to arrange for separate seating for the Claimant. Once again he failed to report for the testing. The Department cannot effectively provide case management services through the WV WORKS Program if a recipient fails to assume responsibility for their actions.

#### **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. The first level sanction will be imposed effective February 1, 2008.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 8<sup>th</sup> Day of January, 2008.**

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**Melissa Hastings  
State Hearing Officer**