



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 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 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 submit a physician's statement to exempt you from work activity.

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 February 2008 through April 2008.

Sincerely,

Melissa Hastings
State Hearing Officer
Member, State Board of Review

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

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

Claimant,

v.

Action Number: 07-BOR-2482

**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 [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 18, 2007 on a timely appeal filed November 13, 2007.

It should be noted that WV Works benefits have 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
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 correctly proposed termination of 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 09/26/07
- D-2 Notice of Decision dated 11/06//2007
- D-3 Fair Hearing request signed by claimant 11-13-2007
- D-4 WV Income Maintenance Manual Section 1.25
- D-5 WV Income Maintenance Manual Section 24.4.
- D-6 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 09-26-07 (D1). Responsibilities to which the Claimant agreed include the following:

██████████ to have doctor complete physician's summary and return by 10-09-07.

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 contacted her by phone near the due date of the physician's summary. Claimant advised the worker that his physician would not complete the summary until Claimant had seen a neurosurgeon. The worker accepted Claimant's statement but requested that he provide a statement from the physician indicating the need for the consultation with the neurosurgeon before completion of the summary. Testimony from the department's representative indicates that she gave Claimant an additional week to provide this statement from the physician.
- 3) Testimony from the department's representative indicates that a statement was never returned from the physician by the Claimant. A Notice of Decision dated 11/06/2007 was issued to the Claimant. (D2) stating the following:

Your WV WORKS will stop. You will not receive this benefit after November 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 11-16-2007. Claimant did not report for the appointment.
- 5) Testimony received from the Claimant indicates he did bring the statement into the office from the physician. Claimant stated the physician's statement was on a prescription type form and he dropped it off at the front desk between November 2 and November 4. Claimant's testimony also indicates he has not yet seen a neurosurgeon. Due to insurance issues the original neurosurgeon he was scheduled to see would not see him. Claimant has started filing applications for jobs as he feels he can work once again.
- 6) Testimony received from department's representative indicates that once Claimant received the Notice of Decision (D2) he contacted her and advised he had brought the physician's statement into the office. Testimony indicates the normal office procedures for returned verifications was for the front desk person to log the information in. In addition, there is a mail folder log as well. Prior to any document being placed into a worker's mail folder, a log is completed showing the date and document placed into the worker's folder. Testimony received from the department's representative indicates both she and her supervisor reviewed the logs for the time period in question and there was no record of any document coming into the office from the Claimant. The only record of the Claimant coming into the office was on November 13, 2007 when he brought in his hearing request.
- 7) Policy found in West Virginia Income Maintenance Manual Section 1.25T (D-4) 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.

8) West Virginia Income Maintenance Manual Section 13.9 (D-6):

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.

- 9) West Virginia Income Maintenance Manual Section 13.9 (D6) 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.
- 10) West Virginia Income Maintenance Manual Section 12.3C states that a determination of incapacity must be made to determine if an individual may have good cause for failure to participate in countable activities. The medical condition must be re-evaluated according to statements of the medical practitioner. Each individual who has good cause for failure to participate in countable activities must have documentation of a medical re-evaluation at least once quarterly.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the benefit group does not comply with requirements found on his 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. Policy also requires that an individual who has claimed an exemption from participating in countable activities must provide statements from a medical practitioner for an exemption to be re-evaluated quarterly.
- 2) Evidence reveals that the Department imposed the third-level sanction to the Claimant's case as a result of failure to provide a statement from his physician to exempt him from work activity. While Claimant's testimony indicates he provided this information to the office there is no credible evidence within the department's records to indicate this information was received. Claimant was offered an opportunity for a good cause appointment on November 16, 2007 at which time the issue may have been resolved but he failed to report for this appointment.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to impose a third-level sanction to the Claimant's case and to terminate the WV Works assistance check. The sanction will take be effective February 2008 through April 2008.

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