



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 21, 2008



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 29, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to impose a third level sanction against your WV Works benefits.

In arriving at a decision, the State Hearings 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 as follows: 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 and all subsequent offenses, the sanction consists of the ineligibility for a check 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 which was submitted at your hearing revealed that the Department failed to give proper adverse action notice between the proposition of the sanction and the imposition of the sanction.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to impose a third level sanction against your WV Works benefits.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Carol Groves, Family Support Supervisor

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

██████████
Claimant,

v.

Action Number: 07-BOR-2523

**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 April 29, 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 April 29, 2008 on a timely appeal, filed November 20, 2007.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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
██████████ Claimant's Grandmother
██████████ Claimant's Son
Carol Groves, Family Support Supervisor
Laura Cochran, Family Support Specialist

Laura Cochran left the hearing prior to adjournment to attend to a family obligation.

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Department's decision to impose a third level sanction against Claimant's WV Works benefits was correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 13.9 and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-3 Form IG-BR-29
- D-4 Notification Letter dated November 16, 2007
- D-20 Personal Responsibility Contract dated October 19, 2007
- D-24 Case Comments and Individual Comments from Rapids Computer System from October 19, 2007 – April 7, 2008
- D-41 Department's Case Summary

Claimants' Exhibits:

- C-5 Doctor's Excuse from ██████████ and Doctor's Excuse from Dr. ██████████ dated November 3, 2007
- C-8 WV Works Orientation Packet
- C-10 Notification Letter dated November 16, 2007 and Hearing Request signed November 20, 2007
- C-11 Correspondence from Laura Cochran to Claimant dated December 5, 2007 and Hearing Request received December 4, 2007
- C-12 Blank Post Office Box Mail Pickup Notice Card with Handwritten Notes

VII. FINDINGS OF FACT:

- 1) Claimant's caseworker, Laura Cochran, mailed Claimant an appointment letter for a 36 month self-sufficiency progress evaluation scheduled for November 15, 2007 on

November 9, 2007. Claimant did not attend the appointment (D-24 and D-29). Claimant's Personal Responsibility Contract (PRC) signed at application on October 19, 2007 read in part (D-20):

Assignment/Activity

Return completed self-sufficiency appraisal by October 22, 2007
Report changes timely (within 10 days) beginning October 19, 2007
Continually look for work beginning October 19, 2007
Spokes class, DHHR building, 8:30 am beginning October 22, 2007
Attend Spokes class 5 days a week beginning October 19, 2007
Turn in timesheets by 5th [day] of following month beginning October 19, 2007

A third level WV Works sanction was proposed for Claimant's failure to attend this appointment. A notification letter dated November 16, 2007 read in part (D-4):

Your WV Works will stop. A third-level sanction is applied due to failure to comply with the requirements of the PRC.

This sanction is being applied due to the failure of [REDACTED] to meet the terms of the PRC by failing to keep appointment.

We have scheduled a Good Cause interview for [REDACTED] on November 20, 2007 at 2:00 at the office address listed above.

- 2) Claimant did not attend the Good Cause appointment on November 20, 2007. A third level sanction was imposed resulting in ineligibility of WV Works for three months (D-24 and D-29).
- 3) [REDACTED] testified that during the home visit on October 30, 2007 Claimant was advised that second and third level sanctions were inevitable as long as Claimant failed to attend Spokes class (D-24).
- 4) Claimant testified that sanctions were not discussed at the home visit. They began discussing Claimant's online business, [REDACTED] and the fact that Claimant needed to provide a doctor's statement to exempt her from her assigned activity but second and third sanctions were not mentioned. She also stated that during the time of the imposition of the third sanction she was still under doctor's care and had turned in an excuse exempting her from work on November 3, 2007 (C-5). She also stated she never received her appointment notices in time to come to the appointments.
- 5) West Virginia Income Maintenance Manual § 13.9 A states:

When a member of the AG or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC, a sanction must be imposed unless the Worker determines that good cause exists.

Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed. Sanctions are applied in the form of benefit reductions and, for

the 3rd or subsequent offense, termination of benefits. The amount of the benefit reduction is a fixed amount and is determined as follows:

1st Offense: 1/3 reduction in the benefit amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months

2nd Offense: 2/3 reduction in the benefit amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months. If the case is in a 1/3 reduction when the 2nd sanction is applied, the 2/3 reduction is applied to the benefit amount the client would be eligible to receive, prior to recoupment; if it was not already reduced by 1/3.

3rd and All Subsequent: Ineligibility for cash assistance for 3 months.

6) West Virginia Income Maintenance Manual § 13.9 B states:

When an additional offense for the same or a different requirement occurs during a sanction period, the next level of sanction is imposed, after proper notification. The client must also be given the opportunity to establish good cause, regardless of the length of time remaining for the sanction that is already in effect. Sanctions may, therefore, run concurrently.

7) West Virginia Income Maintenance Manual § 13.9 C states:

After the 2nd sanction has been imposed, the Worker must make a home visit. The visit may occur anytime after notification that the 2nd sanction has been imposed, but before notifying the client of the 3rd sanction. It is recommended that the visit occur as soon as possible after the 2nd sanction to try to avoid a 3rd sanction. When the 3rd sanction occurs prior to the home visit, the imposition of the 3rd sanction must be delayed until the home visit is completed. The Worker must attempt 2 home visits before imposing the 3rd sanction without a home visit. At least one of the visits must be scheduled in writing.

During the home visit, the Worker must discuss with the client the reason(s) for the 2nd sanction. The Worker will explore with the client why he has not complied with the PRC or otherwise participated and cooperated.

8) West Virginia Income Maintenance Manual § 13.10 states:

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. 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.

VIII. CONCLUSIONS OF LAW:

- 1) Claimant failed to attend a Good Cause appointment on November 20, 2007. The notification letter advising Claimant of the proposition of the third level WV Works sanction and the Good Cause appointment date was issued November 16, 2007. Claimant was not given adequate adverse action notice of seven (7) calendar days from the date of the proposition of the third level sanction and the Good Cause appointment.
- 2) Since Claimant was not given adequate notice of the Good Cause appointment as dictated in policy, a third level WV Works sanction should not have been imposed against Claimant's benefits. Furthermore, no home visit was conducted after the imposition of the second sanction and prior to the third sanction. Policy dictates and third sanction must be delayed until a home visit is completed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a third level sanction against Claimant's WV Works benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of May, 2008.

**Kristi Logan
State Hearing Officer**