




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. 

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 first level sanction on 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 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, a sanction must be imposed unless it is determined that good cause exists. For a first offense, the penalty is a 1/3 check reduction for three 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 Section 13.9).

The information which was submitted at your hearing revealed that you failed to provide good cause for your failure to participate in an assigned activity in a timely manner.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to impose a first 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-2566

**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 30, 2007.

It should be noted here that the claimant's benefits have not been 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
██████████ Claimant's Grandmother
██████████ Claimant's son
Carol Groves, Family Support Supervisor
Laura Cochran, Family Support Specialist

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 first 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-5 Form IG-BR-29
- D-6 Notification Letter dated October 29, 2007
- D-7 West Virginia Income Maintenance Manual § 1.25 T
- D-8 West Virginia Income Maintenance Manual § 13.9
- D-9 West Virginia Income Maintenance Manual § 24.4 D
- D-20 Personal Responsibilities Contract dated October 19, 2007
- D-21 "Can Do" List with a Date Stamp of October 22, 2007
- D-24 Case Comments and Individual Comments from Rapids Computer System from October 19, 2007 – April 7, 2008
- D-25 Doctor's Excuse from ██████████ and Doctor's Excuse from Dr. ██████████ dated November 3, 2007
- D-41 Department's Hearing Summary
- D-42 Self Sufficiency Appraisal received October 22, 2007

Claimants' Exhibits:

- C-1 Application Form dated October 19, 2007
- C-2 Personal Responsibility Contract with Date Stamp of October 22, 2007
- C-3 Referral for Training/Services for Spokes Class signed by Laura Cochran
- C-4 WV Works Activity Exemption Form
- C-5 Doctor's Excuse from ██████████ and Doctor's Excuse from Dr. ██████████ dated November 3, 2007
- C-6 Notification Letters dated October 29, 2007
- C-7 Hearing Request Signed November 12, 2007

- C-8 WV Works Orientation Packet
- C-9 Subpoena to Appear November 28, 2007

VII. FINDINGS OF FACT:

- 1) Claimant attended WV Works Orientation on October 18, 2007 and completed an application for WV Works on October 19, 2007. Claimant signed a Personal Responsibilities Contract (PRC) on October 19, 2007 which read (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

Claimant was given the referral form to start Spokes classes and a blank self-sufficiency plan to complete and return.

- 2) Claimant called her caseworker, Laura Cochran, on October 22, 2007 and notified her that she did not attend Spokes class which she was to start that date. Claimant stated she her absence was due to a doctor's appointment but would be in Spokes class the following day. Claimant called Ms. Cochran on October 23, 2007 advising her that she needed to be released from her doctor before she could attend Spokes class. Claimant was advised by Ms. Cochran of the imposition of a sanction if she did not attend class the next day (D-24).
- 3) Ms. Cochran proposed a first level sanction on Claimant's WV Works benefits on October 26, 2007 when Claimant had failed to attend any Spokes classes that week. A notification letter dated October 29, 2007 was issued and read in part (D-6):

A sanction will be applied to your assistance group effective December 1, 2007. This is the first sanction and will continue for 3 months.

This sanction is being applied due to the failure of _____ to meet the terms of the PRC by failing to attend an assigned activity.

We have scheduled a Good Cause interview for _____ on November 6, 2007 at 3:30 at the office address listed above. If this appointment is not kept, the sanction listed above will be applied to your benefits.

- 4) A home visit was conducted on October 30, 2007 by Ms. Cochran and Carol Groves. Claimant provided Ms. Cochran and Ms. Groves a doctor's excuse from [REDACTED] (D-25). It stated Claimant was under their care from October 24 – October 29, 2007. Claimant was advised to get another excuse for the

dates she missed Spokes class not covered by this excuse. Claimant advised Ms. Cochran and Ms. Groves that she was in the process of starting her own online business (D-24).

- 5) Claimant failed to attend the Good Cause appointment on November 6, 2007 or provide Ms. Cochran with a doctor's excuse for October 22, October 23 and October 30 – November 2, 2007. A first level WV Works sanction was imposed and Claimant's benefits were reduced by 1/3.
- 6) Claimant testified that there were several inconsistencies regarding the dates of the Department's paperwork. She did not receive the referral form to begin Spokes class until October 22, 2007. She pointed out the date on top of the referral form was October 22, 2007 and the date she was to begin classes was also October 22, 2007 (C-3). She stated that if she was given the referral form during her application, the date on the top of the form would have been October 19, 2007 and not October 22, 2007.

Claimant also disputed the date of the PRC. Claimant submitted a copy of the PRC that was signed on October 19, 2007 showing a date stamp of October 22, 2007 (C-2). She stated the date next to her signature on the "can do" list was October 24, 2007 but that form also had a date stamp of October 22, 2007 (D-21).

- 7) Claimant testified that she made Ms. Cochran aware of an arm injury during her application that could prevent her from participating in an assignment. She also turned in two doctor's excuses covering the dates she was supposed to attend Spokes class (C-5) which should have exempted her from that assignment. The first excuse was turned in during the home visit and the second was sent November 3, 2007. She did not attend the Good Cause appointment was because she was under doctor's care.

Claimant also wanted on record that she first requested a hearing on November 12, 2007 over the first sanction and requested a continuation of benefits, a pre-hearing conference and section of the policy manual all of which she did not receive (C-7).

- 8) Ms. Cochran explained the reason Claimant had a PRC with a date stamp of October 22, 2007 on it was that for some reason, she turned in her copy of the PRC along with the self-sufficiency plan (D-42) which also had a date stamp of October 22, 2007. Ms. Cochran stated Claimant was given a copy of her PRC at application along with the referral form to start Spokes class. She could not explain the date of October 22, 2007 at the top of the form (C-3).
- 9) Ms. Cochran testified she was not aware of the Claimant's medical problems until the home visit on October 30, 2007. Ms. Cochran presented the "can do" list completed by the Claimant at orientation in which the Claimant indicated she was physically able to do the following (D-21):

- Sit in a classroom with ample opportunity to stand/stretch
- Perform light clerical duties; answer phones, file, make photocopies, use a computer
- Assist in a child-care center

Assist in a library with tasks not involving heavy lifting

Since Claimant indicated she could sit in a classroom setting, a placement in Spokes class was an appropriate assignment. Upon learning of Claimant's ongoing medical issues during the home visit, Ms. Cochran mailed Claimant a WV Works Activity Exemption Form to be completed by her doctor to be returned by November 5, 2007 (C-4). By Claimant's own admission, she never had this form completed.

Ms. Cochran received the doctor's excuse by fax from Dr. [REDACTED] which stated Claimant was under her care from October 22, 2007 – November 28, 2007 (D-25 and C-5). Ms. Cochran did not receive this excuse until November 30, 2007, after the Good Cause appointment and the imposition of the first sanction (D-24).

10) 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.

11) West Virginia Income Maintenance § 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.

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.

VIII. CONCLUSIONS OF LAW:

- 1) Claimant was aware of her WV Works assignment of attending Spokes class five days a week when she signed the PRC at application on October 19, 2007. At that time, there was no indication that Claimant would not be able to participate in this activity.
- 2) Claimant was given the opportunity to provide good cause for her failure to participate in her assigned activity, by having her physician complete the WV Works Activity Exemption Form and attending her Good Cause Appointment on November 6, 2007. Claimant failed to have the Exemption form completed or attend the Good Cause appointment.
- 3) Claimant failed to present good cause for failure to participate in her assigned activity in a timely manner to avoid the imposition of the first level sanction and failed to present good cause for her failure to attend the Good Cause appointment.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a first level WV Works sanction against Claimant's 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**