



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 25, 2008



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 17, 2008. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your benefits under the West Virginia Works Program based on the application of a first program 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 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)

Information submitted at your hearing reveals that you failed to comply with the requirements of your PRC. Because you were unable to establish good cause for non-compliance, the Agency has correctly proposed that a first sanction be applied to your case.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to apply a sanction to your West Virginia Works case.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Stacy North, FSS, DHHR

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

██████████
Claimant,

v.

Action Number: 07-BOR-2632

**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 January 25, 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 via videoconference on January 17, 2008 on a timely appeal filed December 17, 2007. The hearing was originally scheduled for January 3, 2008, but was rescheduled at the request of the Department.

It should be noted that West Virginia Works 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
Mark Tennant, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 decrease the Claimant's West Virginia Works benefits based on application of a first 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 West Virginia Income Maintenance Manual Section 24.4, L
- D-2 West Virginia Works Personal Responsibility Contract dated July 20, 2007
- D-3 Letter from Division of Rehabilitative Services dated August 9, 2007
- D-4 Individual Self-Sufficiency Plan
- D-5 West Virginia Works Personal Responsibility Contract dated September 18, 2007
- D-6 Letter from Division of Rehabilitative Services dated October 30, 2007
- D-7 Electronic mail transmission
- D-8 West Virginia Income Maintenance Manual Section 1.25, T
- D-9 General Physical report

VII. FINDINGS OF FACT:

- 1) The Claimant signed a West Virginia Works Personal Responsibility Contract (PRC) on July 20, 2007 (D-2), agreeing to cooperate and keep appointments with the Division of Rehabilitative Services (DRS). The Family Support Specialist testified that the Claimant's referral was sent to DRS on July 23, 2007.
- 2) The DRS worker scheduled a vocational assessment appointment for the Claimant on August 29, 2007, as specified in Exhibit D-3. The Family Support Specialist later spoke with the DRS worker about rescheduling the appointment.

- 3) The Claimant completed an updated Personal Responsibility Contract on September 18, 2007 (D-5), agreeing to “cooperate with DRS worker Rebekah Lynch-Kantes, keep appt. with her, call her and get new appointment.”
- 4) On October 31, 2007, the Claimant advised the Family Support Specialist that her new DRS appointment had been scheduled for December 12, 2007, as noted in Exhibit D-6.
- 5) The Claimant did not attend the December 12, 2007 appointment. She failed to inform the worker she would not attend and failed to offer a reason for her non-attendance. Therefore, the worker placed a first sanction on the West Virginia Works benefits to begin in January 2008. A good cause appointment was scheduled for December 17, 2007.
- 6) The Claimant called the worker to discuss her sanction on December 17, 2007. She stated that the physician’s assistant who completed her general physical examination (form DFA-RT-5) (D-9) on November 7, 2007 had checked “no” to the question “Should applicant be referred for vocational rehabilitation?” Because the statement had been checked “no,” the Claimant had believed she was no longer obligated to attend the DRS appointment. She did not explain to the worker why she failed to inform anyone of this decision. Exhibit D-9 indicates that the physician’s assistant believes the Claimant is unable to work for a period of one year.

The Family Support Specialist maintained that the Claimant failed to establish good cause because the DRS appointment had been discussed on numerous occasions, was placed on the PRC and had been rescheduled.

- 7) The Claimant maintained that she has always cooperated with West Virginia Works requirements, but did not believe she needed to attend the DRS appointment based on the statement on the physical exam form. She testified that she cannot sit or stand for long periods of time as a result of her medical condition and was told the DRS assessment would take hours to complete.
- 8) Policy found in West Virginia Income Maintenance Manual Section 1.25, T, (D-8) provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV Works 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:

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.

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.

- 10) West Virginia Income Maintenance Manual Section 13.9 (D) 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.
- 11) West Virginia Income Maintenance Manual Section 13.10 sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. 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. College is defined as a 2- or 4-year undergraduate degree program.
 - A single parent can prove that child care is unavailable for his child, age 6 or under.
 - He is required to appear in court or for jury duty.
 - He is experiencing a family crisis such as death or the life-threatening illness of a spouse, parent, child or stepchild, or domestic violence and/or the need to protect abused children makes participation impossible, dangerous or embarrassing and the client accepts a referral 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.
 - A requirement 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.
 - a. He would be required to travel more than one hour each way to participate.

12) West Virginia Income Maintenance Manual Section 24.4, L (D-1) states:

Additional testing, assessments, and evaluations may be necessary for Work-Eligible WV WORKS participants with physical and/or mental disability issues in 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;
- Participants who score below a sixth grade level in reading on the Test for Adult Basic Education (TABE) and who score 12 and above in Sections A–D of the Learning Needs Screening or answer “yes” to question #13 in Section D; or
- Participants who are in a physical or mental health barrier at the time they reach their 55th month of TANF and have never been referred for a DRS assessment.

All Work-Eligible WV WORKS participants who meet the criteria listed above must be referred to DRS unless the Worker and the Supervisor determine there are documented and verified circumstances which prevents [*sic*] the effective administration and completion of the DRS vocational evaluation. Appropriate documentation must be provided and corresponding case comments must be made in CMIC. These circumstances must be reviewed monthly.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that 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.
- 2) 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. For a first offense, the penalty is a 1/3 reduction in the check amount for three months.

- 3) While a physician's assistant checked "no" in regard to referring the Claimant for vocational rehabilitation, income maintenance policy dictates that a client who has been determined unable to work for more than six months is a mandatory referral for rehabilitative services. While the Claimant may have believed she did not need to attend the DRS appointment, she failed to request clarification from her worker. There is no evidence to indicate that the statement on the general physical examination form (DFA-RT-5) supersedes income maintenance policy.
- 4) Whereas the Claimant was unable to establish good cause for failing to adhere to her PRC, the Agency has correctly proposed the application of a first sanction to her West Virginia Works benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency in applying a first sanction to the Claimant's West Virginia Works benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of January, 2008.

**Pamela L. Hinzman
State Hearing Officer**