



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

April 28, 2008



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 22, 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 West Virginia 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, 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 the sanction imposed was against [REDACTED] [REDACTED] for his failure to attend an assigned activity. Mr. [REDACTED] left the home prior to the imposition of the sanction and a first level WV Works sanction should not be assigned to you.

It is the decision of the State Hearings Officer to **reverse** 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
Sharon Ellis, Family Support Specialist

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

██████████
Claimant,

v. Action Number: 08-BOR-660

**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 22, 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 22, 2008 on a timely appeal, filed December 26, 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
Sharon Ellis, 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 WV Works first level sanction is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 2.17, 13.9 and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments from Rapids Computer System from December 3, 2007 – April 22, 2008 and Individual Case Comments from December 3, 2007 – March 10, 2008
- D-2 Personal Responsibility Contract for ██████████ and ██████████ dated December 3, 2007
- D-3 West Virginia Income Maintenance Manual 1.25 T, 13.9 and 24.4 D
- D-4 WV Works Application and Rights and Responsibilities Form dated December 3, 2007
- D-5 Notification Letter dated December 14, 2007
- D-6 Notification Letter dated December 17, 2007
- D-7 Memo from WorkForce West Virginia dated December 11, 2007 and Personal Responsibility Contract Sanction Screen from Rapids dated December 13, 2007

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant applied for WV Works with her son's father, ██████████ on December 3, 2007. Claimant and Mr. ██████████ each signed a Personal Responsibility Contract (PRC). Claimant was exempt from participating in an activity. Mr. ██████████'s PRC read (D-2):

Assignment/Activity:

- GED – Options (Class) 35 hours a week beginning December 7, 2007
- Time Sheet [in] by 5th [of the month]
- Keep all appointments
- Call worker and sponsor if absent

- 2) Sharon Ellis, Claimant's WV Works caseworker, received notification dated December 11, 2007 from Cheryl Watkins of WorkForce West Virginia that Mr. [REDACTED] did not show up for his GED/Options class (D-7).
- 3) On December 13, 2007 Ms. Ellis proposed a first level sanction against Mr. [REDACTED] for failure to attend an assigned activity (D-7). A notification letter dated December 14, 2007 was issued and read in part (D-5):

Your WV Works will decrease from \$340 to \$227 effective January 1, 2008.

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

We have scheduled a Good Cause interview for [REDACTED] on December 21, 2007 at 10:00. If this appointment is not kept, the sanction listed above will be applied to your benefits.

- 4) On December 14, 2007 Ms. Ellis removed Mr. [REDACTED] from Claimant's case after receiving a phone call from her reporting that Mr. [REDACTED] had left the home on December 9, 2007 (D-1).
- 5) Claimant did not attend the Good Cause appointment scheduled for Mr. [REDACTED] on December 21, 2007. The sanction was imposed on her WV Works benefits. Claimant came into the office on December 26, 2007 after receiving the notification letter that her case had been sanctioned. Claimant was not seen by her caseworker, Ms. Ellis that date but, was seen by another caseworker (D-1). Claimant requested a hearing.
- 6) Claimant came into the office December 27, 2007 and was seen by Ms. Ellis. Ms. Ellis had a pre-hearing conference with Claimant who requested a continuation of benefits until the hearing.
- 7) Claimant testified that immediately after leaving the office on December 3, 2007, Mr. [REDACTED] told her he had no intention of participating in his assigned activity. An argument ensued and he moved out on December 6, 2007, not December 9, 2007. She stated that she left Ms. Ellis a voice mail message reporting this on December 12, 2007. She did not attend the Good Cause appointment because she did not receive the sanction/Good Cause appointment letter until December 24, 2007 when Mr. [REDACTED] brought her the mail. Claimant had been using Mr. [REDACTED]'s grandfather's address as her mailing address because there was a \$12 fee for a key to the mailbox at the apartment where she resided. She had not changed her mailing address after Mr. [REDACTED] left the home saying she had no other address to give.

the Claimant continued in saying Mr. [REDACTED] took their car with him when he left home and could not report his absence until December 6, 2007 when her brother came to visit and she used his cell phone (she had no home phone). She also stated she did not have any stamps to write her caseworker. She came into the office after receiving the sanction notification letter to contest the sanction. Claimant did not feel it was fair for

her case to be sanctioned when Mr. [REDACTED] was no longer in the home and she reported this as required.

- 8) West Virginia Income Maintenance Manual § 2.17 B (2) states:

For WV Works cases, all changes in a client's circumstances must be reported immediately.

- 9) 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.

- 10) West Virginia Income Maintenance Manual § 13.9 E states:

When an adult or emancipated minor leaves the home, he takes his assigned sanctions with him. Those adults and emancipated minors remaining in the home retain their assigned sanctions.

- 11) West Virginia Income Maintenance Manual § 13.10 states:

A good cause determination is not required when the client is exempt from participation in a work activity.

VIII. CONCLUSIONS OF LAW:

- 1) By the caseworker's account, Claimant reported that Mr. [REDACTED] out of the home on December 14, 2007, prior to the application of the sanction and before the reduction of benefits would have taken effect. The letter notifying Claimant of the sanction/Good Cause appointment was not mailed until December 14, 2007. Claimant

could not have known of the sanction prior to reporting Mr. [REDACTED] out of the home.

- 2) The sanction was imposed against Mr. [REDACTED] for his failure to attend an assigned activity as indicated on his PRC. Claimant was exempt from participation requirements and could not be sanctioned for failure to participate. Although the sanction was proposed the day prior to the report of Mr. [REDACTED]'s absence, the sanction was not imposed until after he was removed from Claimant's case. Therefore, a first level WV Works sanction should not have been applied to the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a first 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 28th Day of April, 2008.

**Kristi Logan
State Hearing Officer**