



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 22, 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 second level sanction on your WV Works benefits and a sanction on your AFDC Medicaid for failure to cooperate with the Bureau of Child Support Enforcement (BCSE).

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 and AFDC Medicaid programs are based on current policy and regulations. Some of these regulations state as follows: The specified relative receiving WV WORKS, or the specified relative included in AFDC Medicaid, must cooperate with child support activities including locating absent parents, establishing paternity and/or obtaining support for the children and redirecting to the BCSE any child support payments received. Failure to cooperate with BCSE will result in the imposition of a sanction (West Virginia Income Maintenance Manual § 15.3).

The information which was submitted at your hearing revealed that you failed to establish good cause for your failure to cooperate with the Bureau of Child Support Enforcement.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to impose a second level WV Works sanction and a sanction on your AFDC Medicaid.

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: 08-BOR-961
08-BOR-962**

**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 February 28, 2008.

It should be noted here that the claimant's benefits not been continued pending a hearing decision.

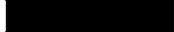
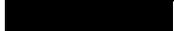
II. PROGRAM PURPOSE:

The Programs entitled WV Works and AFDC Medicaid are 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.

The Aid to Families with Dependent Children (AFDC, AFDCU for unemployed parents) Medicaid Program is designed to provide medical assistance to eligible families with children to age 18. These dependent children must be deprived of parental support due to the death, continued absence, incapacity, or unemployment of the parents. In addition, the family must meet financial eligibility criteria.

III. PARTICIPANTS:

 Claimant
 Claimant's Grandmother
 Claimant's Son
Carol Groves, Family Support Supervisor

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 second level WV Works sanction and a sanction against Claimant's AFDC Medicaid was correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 15.3, 13.9 and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- 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-29 Form IG-BR-29
- D-30 Notification Letter dated February 13, 2008
- D-31 West Virginia Income Maintenance Manual § 9.18
- D-32 West Virginia Income Maintenance Manual § 16.8
- D-33 West Virginia Income Maintenance Manual § 15.3
- D-34 West Virginia Income Maintenance Manual § 1.25 T
- D-35 West Virginia Income Maintenance Manual § 13.9
- D-41 Department's Case Summary
- D-43 Interdepartmental Memo dated February 8, 2008

Claimants' Exhibits:

- C-16 Paternity Test Results dated June 29, 2004, Birth Certificate for _____, Paternity Affidavit dated September 26, 2003
- C-17 Order for Change of Name dated February 2, 2006
- C-18 Hearing Request signed February 27, 2008
- C-19 Notification Letter dated February 13, 2008
- C-20 Correspondence from Bureau of Child Support Enforcement dated January 28, 2008

VII. FINDINGS OF FACT:

- 1) Claimant signed a Personal Responsibility Contract (PRC) at application on October 19, 2007. Pertinent parts of the PRC state (D-20):

- I understand that I am required to attend any meetings or appointments related to my eligibility for cash assistance and my self-sufficiency goals. These meetings or appointments include, but are not limited to, home visits, periodic review of my eligibility for benefits, assessment of my skills and progress in meeting my goals and becoming self-sufficient, employment interviews scheduled by or for me, etc. or I may be sanctioned.
- I will help collect child support for my child. Unless good cause exists, this means helping to find the parent of my child if the parent does not live with me and my child, helping to determine who my child's father is, if it has not yet been determined, and helping to enforce court orders for my child's support.
- I understand that I must comply with the Rights and Responsibilities section of my application for assistance and follow my PRC or a penalty may be applied. Penalties include case closure, repayment or legal action, removal from the payment, or sanctions.

- 2) A second level WV Works sanction and a Medicaid sanction were proposed on February 12, 2008 after Claimant's caseworker received an interdepartmental memorandum dated February 8, 2008 from the Bureau of Child Support Enforcement (BCSE) advising that Claimant was not cooperating in their efforts to obtain support for [REDACTED] (D-24). The memorandum read (D-43):

Please sanction benefits CT (caretaker) did not show for appointment or return application to name another father.

- 3) A notification letter dated February 13, 2008 was issued and read in part (D-30):

Your AFDC Medicaid will stop. You will not receive this benefit after February 2008. The following individuals are ineligible: [REDACTED] not cooperating with medical support liability requirements.

Your WV Works will decrease from \$201 to \$101 effective March 2008. This sanction is being applied due to the failure of [REDACTED] to meet the terms of

the PRC by failing to cooperate with BCSE. We have scheduled a Good Cause interview on February 21, 2008.

Claimant failed to attend the Good Cause appointment on February 21, 2008. Sanctions against Claimant's WV Works benefits and AFDC Medicaid were applied (D-24).

- 4) Claimant stated she has cooperated with BCSE all along. Claimant testified that the father listed on her son [REDACTED]'s birth certificate is not the biological father. After a paternity affidavit was signed, Claimant had testing done to show the man on the birth certificate is not [REDACTED]'s father (C-16). Claimant stated BCSE tried to obtain support from this man even though she provided them with the results of the testing but this action was eventually dropped.

Claimant stated there is no other name of a possible father to provide to BCSE. She also stated that her BCSE caseworker was aware of her situation. The only other contact Claimant has had with BCSE is a letter from them dated January 28, 2008 which read (C-20):

UIFSA petition for support has been received in the proper jurisdiction. If after 90 days you receive no further word from me with regard to your case, kindly contact me.

She stated she never received an appointment letter from BCSE or an application packet. She has not contacted BCSE since her benefits were sanctioned.

- 5) West Virginia Income Maintenance Manual § 15.3 states:

Federal law mandates that efforts be made to locate absent parents, establish paternity and/or obtain support for the children. The specified relative receiving WV WORKS, or the specified relative included in an AFDC Medicaid or AFDC-Related Medicaid AG, must cooperate with child support activities and redirect to the Bureau for Child Support Enforcement (BCSE) any child support payments received.

- 6) West Virginia Income Maintenance Manual § 15.3 C states:

The client has good cause for refusal to cooperate with BCSE if one of the following conditions exists:

- The child was conceived as the result of incest or forcible rape.
- Legal proceedings for the adoption of the child are pending.
- The client is currently being assisted by the Department or by a licensed private social agency to resolve the issue of whether to keep the child or to relinquish him for adoption and the discussions have not gone on for more than three months.
- The client's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

- Physical or emotional harm to the child for whom support is being sought; or
- Physical or emotional harm to the parent or other specified relative with whom the child lives, which would reduce such person's capacity to care for the child adequately. A finding of good cause for emotional harm may only be based upon evidence of an emotional impairment that substantially affects the parent or other relative's functioning.

If good cause does exist, no BCSE action is required or taken and no penalty is applied to the client. If good cause does not exist, the WV WORKS case is referred to BCSE and the penalty described in Item H below is applied. The Worker must record in RAPIDS the circumstances involved in the determination of good cause.

7) West Virginia Income Maintenance Manual § 15.3 H (1) states:

The decision about the application of a sanction is made by the Worker. The case is sanctioned for failure to cooperate with BCSE requirements based on Part 1 of the PRC.

8) 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.

9) 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 failed to complete an application for child support and provide the name of [REDACTED]'s biological father. Per policy, Claimant's WV Works benefits and AFDC Medicaid were sanctioned.
- 2) Claimant has not contacted BCSE to complete an application for support since the imposition of the sanctions nor has she provided good cause to the Department for her failure to cooperate.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a second level WV Works sanction and sanction against AFDC Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of May, 2008.

**Kristi Logan
State Hearing Officer**