



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
PO Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 14, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 16, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your West Virginia Works benefits (cash assistance) based on the application of a third (3rd) level 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. The client must be given the opportunity to establish good cause. For a third offense, the sanction consists of termination of the check benefit 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 submitted at your hearing demonstrates that you were not afforded an opportunity to establish good cause for your failure to appear for a scheduled appointment with the Department.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department in applying a third (3rd) level sanction in your WV WORKS case.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Marcia Jones, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-1084

**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 June 16, 2009 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 hearing convened on June 16, 2009 on a timely appeal filed April 21, 2009.

II. PROGRAM PURPOSE:

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
Marcia Jones, Department Representative

Presiding at the Hearing was Cheryl Henson, 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 reduce the Claimant's benefits and services through the WV WORKS Program based on the imposition of a 3rd sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9 & 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 DFA-PRC-1 Signature Page dated January 8, 2009
- D-2 DFA-PRC-1 Page four (4) of four (4)
- D-3 DFA-PRC-1 Page three (3) of four (4)
- D-4 Notification letter dated February 26, 2009
- D-5 Notification letter dated February 24, 2009
- D-6 Rapids Sanction Screen AIPR dated June 16, 2009 – Fourth Sanction
- D-7 Rapids Sanction Screen AIPR dated June 16, 2009 – Third Sanction
- D-8 Rapids Sanction Screen AIPR dated June 16, 2009 – Second Sanction
- D-9 Rapids Sanction Screen AIPR dated June 16, 2009 – First Sanction
- D-10 Notification letter dated March 5, 2009

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) On January 8, 2009 the Claimant signed (D-2) page four (4) of a Personal Responsibility Contract, hereinafter called PRC, indicating her agreement to participate in the following assignments/activities:
 - Keep all appointments with DHHR, BCSE and all referring agencies
 - Cooperate with BCSE (Child Support)
 - Report changes within 10 days
 - Enroll in phlebotomy classes at [REDACTED]
 - Take TABE test at [REDACTED]
 - Turn in time sheets by the 5th monthly
 - Contact DHHR worker once enrolled at [REDACTED] 746-2360 ext. 3404
 - Continue to pursue SSI

She also indicated by signing that she understood if she failed to cooperate by participating with all the assignments/activities listed that she would be penalized.

- 2) The Department listed the Claimant's barriers to employment as transportation and child care on page three (3) of the PRC (D-3). They recorded that they issued a bus pass and gave the Claimant a referral to Connect Day Care services.
- 3) The Department sent the Claimant a letter on February 24, 2009 (D-5) informing her that she had been scheduled for an appointment with Income Maintenance/Family Support on March 3, 2009 at 1:00 p.m. The appointment was scheduled in order to update the Claimant's PRC and initiate a Medical Review Team referral.
- 4) The Claimant failed to keep this appointment. The Department sent the Claimant a notification letter dated March 5, 2009 which includes in pertinent part:

ACTION: Your 09-11-08 application for WV WORKS has been DENIED.

REASON: A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

The Department's notice does not include a Good Cause hearing appointment notice, and no evidence was provided to show the Claimant was made aware of her Good Cause appointment (D-6) scheduled for March 12, 2009 at 1:00 p.m. The notice is confusing, as it speaks of a 09-11-08 application being denied, and the Claimant was already receiving benefits. The notice does not include the specific reason for the sanction, which is the missed appointment.

- 5) The Department contends the Claimant failed to abide by her PRC agreement signed (D-2) January 8, 2009 in which she agreed to keep all scheduled appointments with them. The Department offers this failure as the reason a third level sanction was applied against the Claimant's benefits.
- 6) The Claimant provided several reasons for her failure to keep the appointment with the Department. She indicated that she has no transportation, has small children and must rely on bus transportation in order to get from place to place. She states she was never given a bus pass by the Department or a referral to Connect for day care services. She indicated she does not even know where Connect is located.
- 7) Policy found in Chapter 1.25, T, of the West Virginia Income Maintenance Manual provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG (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.
- 8) West Virginia Income Maintenance Manual section 13.9 states:

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.

The client must also be given the opportunity to establish Good Cause.

- 9) West Virginia Income Maintenance Manual 24.4 states:

Failure without good cause to keep appointment to initiate or continue the assessment process indicates a failure/refusal to cooperate or participate. All Work-Eligible Individuals must be scheduled for assessment testing unless one of the exceptions exists.

- 10) West Virginia Income Maintenance Manual Section 13.10 states in pertinent part:

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. See Section 6.3, Items D and E. A Worker generated letter from RAPIDS or a manual letter, DFA-WVW-NL-1 is used.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that failure, without good cause, to adhere to the responsibilities contained in Part 1 or Part 2 of the PRC results in imposition of a sanction against the benefit group. A sanction must be imposed unless the worker determines that good cause exists. Policy also states that clients must be given the opportunity to establish Good Cause.
- 2) The evidence reveals that the Claimant failed to appear for her scheduled appointment with the Department on March 3, 2009. The Claimant clearly failed to honor the PRC agreement to keep all appointments with the Department; however, the evidence also shows the Department failed to notify the Claimant of her Good Cause appointment scheduled for March 12, 2009, and by doing so failed to afford the Claimant an opportunity to establish good cause. The Department's termination notice is also inaccurate.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the ruling of the State Hearings Office to **reverse** the Agency's proposal to apply a third level sanction to your WV WORKS benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of July, 2009

**Cheryl Henson
State Hearing Officer**