



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 31, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 21, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the West Virginia WORKS Program based on the application of a 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 WV 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 third offense, the sanction consists of ineligibility for cash assistance for 3 months. (West Virginia Income Maintenance Manual § 13.9)

Information submitted at your hearing demonstrates that you had good cause for failing to comply with the requirements of your Personal Responsibility Contract (PRC).

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate your cash assistance based on a 3rd level sanction in your WV WORKS case.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Amy Toler, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-1255

**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 August 31, 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 was convened on July 21, 2009 on a timely appeal filed May 19, 2009.

It should be noted that benefits have continued pending the hearing decision.

II. PROGRAM PURPOSE:

The purpose of WV WORKS is to help economically dependent, at-risk families become self-supporting. It is a work-oriented, performance-based, time-limited Program that emphasizes employment and personal responsibility. The goals of WV WORKS are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency, and structure assistance to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Claimant

Kim Cox, Family Support Specialist (FSS) WVDHHR
Amy Toler, Family Support Specialist (FSS) WVDHHR

Presiding at the hearing was Thomas E. Arnett, 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 terminate 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, 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated May 14, 2009
- D-2 WV WORKS PRC (Part 1 of 2) for -----
- D-3 WV WORKS PRC (Part 2 of 2) for -----
- D-4 WV WORKS PRC (Part 1 of 2) for -----
- D-5 WV WORKS PRC (Part 2 of 2) for -----
- D-6 Correspondence advising of [REDACTED] Co. Job Fair – dated 4/23/09
- D-7 WV WORKS Appointment Notice - Appointment scheduled for May 13, 2009
- D-8 West Virginia Income Maintenance Manual, Chapter 1.25
- D-9 West Virginia Income Maintenance Manual, Chapter 13.9
- D-10 West Virginia Income Maintenance Manual, Chapter 24.4

VII. FINDINGS OF FACT:

- 1) On or about May 14, 2009, the Claimant was notified via a Notice of Decision (D-1) that the Department was applying a 3rd sanction to her WV WORKS benefits. This notice states, in pertinent part:

A sanction will be applied to your assistance group effective 06/09. This is the third or subsequent sanction and will continue for 3 months or until compliance.

You and your family will be ineligible for WV Works benefits for 3 months.

This sanction is being applied due to the failure of ----- to meet the terms of the Personal Responsibility Contract by failing to attend an assigned activity.

This correspondence further indicates that a good cause interview has been scheduled for the Claimant on May 18, 2009.

- 2) As a matter of record, both parties acknowledged that the good cause interview occurred as scheduled, however, the Department was unwilling to grant good cause for missing the assigned activity.
- 3) The Department contends that placing the Claimant / Claimant's AG in the proposed 3rd level sanction is supported by the evidence. The Department submitted exhibits D-2 & D-3 (Personal Responsibility Contract, hereinafter PRC, for -----) and exhibits D-4 & D-5 (PRC for -----) to show that the Claimant and her husband (-----) entered into a contractual agreement by signing their respective PRC and agreeing to attend all scheduled appointments appointments.
- 4) Exhibit D-6 is correspondence dated April 23, 2009 notifying the Claimant and her husband that they were required to attend the 4th Annual ██████████ County Job Fair on May 2, 2009. This notice goes on to advise the location of the job fair and indicates the event will be ongoing from 10:00 a.m. to 2:00 p.m.
- 5) The Claimant and her husband contend that a 3rd sanction should not be applied to their case due to the circumstances that occurred on the day they were to attend the job fair.

The Claimant and her husband contend that the Claimant's husband had what he thought was a job interview in ██████████ at 10:30 a.m. on the day of the job fair. The Claimant's husband purported that the interview turned into something much more involved as he was required to participate in orientation, group testing etc. As a result, the appointment lasted much longer than he anticipated and he did not get back home until 12:30 or 1:00 p.m. Because children are not permitted at the job fair child care arrangements needed to be made and this would have left little time visit with prospective employers. In addition, the Claimant and her husband must share one vehicle, so the Claimant was unable to attend the job fair until her husband returned home. The Claimant's husband contends that the reason for failing to appear was work related and further provided testimony to indicate he phoned his worker about the interview and that she was aware he was participating in a job interview that morning.

- 6) The Department's representative acknowledged that the Claimant's husband called and left a message advising that he had an interview on the morning of the job fair. The Department also agreed that the Claimant's husband could not have known his interview in ██████████ would be so lengthy.
- 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 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, Chapter 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.

- 9) The West Virginia Income Maintenance Manual, Chapter 13.10, sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. This policy goes on to state that the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The Worker has considerable discretion in imposing a sanction.

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.
- 2) When a member of the benefit group does not comply with the requirements found on his/her PRC, a sanction must be imposed unless the worker determines that good cause exists. Pursuant to WV WORKS policy, a 3rd level sanction results in closure/termination of cash assistance for 3 months. While there are specific circumstances noted in policy for which the good cause can be granted, policy goes on to state that the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The worker has considerable discretion in imposing a sanction.
- 3) It is undisputed that the Claimant and her husband failed to appear at the [REDACTED] County Job Fair, however, both parties agreed that the Claimant's husband made the Department aware of his job interview scheduled on the same morning. The Claimant and her husband appeared for the good cause interview and maintain that they failed to attend the job fair only because the Claimant's husband was attempting to secure employment.
- 4) The evidence clearly demonstrates the Claimant and her husband were attempting to comply with the requirements of their PRC to the best of their ability. Pursuant to existing policy, good cause existed. The Department's proposal to impose a 3rd level sanction in the Claimant's WV WORKS case cannot be affirmed.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate the Claimant's WV WORKS benefits based on the imposition of a 3rd level sanction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August 2009.

**Thomas E. Arnett
State Hearing Officer**