



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 28, 2009

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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 reduce your benefits under the West Virginia WORKS Program based on the application of a first (1<sup>st</sup>) 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 first offense, the sanction consists of 1/3 reduction in the check amount 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)

Information submitted at your hearing demonstrates that you failed to comply with the requirements of your Personal Responsibility Contract (PRC).

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to apply a 1<sup>st</sup> 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  
Kim Cox, FSS, DHHR

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1282**

**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 28, 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 27, 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

-----, Claimant's witness

Kim Cox, 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 reduce the Claimant benefits and services through the WV WORKS Program based on the imposition of a 1<sup>st</sup> 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 May 7, 2009 Notice of TABE test appointment
- D-2 WV WORKS Personal Responsibility Contract (PRC) – signed April 7, 2009
- D-3 West Virginia Income Maintenance Manual, Chapter 1.25
- D-4 West Virginia Income Maintenance Manual, Chapter 13.9
- D-5 West Virginia Income Maintenance Manual, Chapter 24.4

#### **VII. FINDINGS OF FACT:**

- 1) The Claimant signed her Personal Responsibility Contract (D-2), hereinafter PRC, on April 7, 2009 agreeing to take a TABE test on April 23, 2009.
- 2) As a matter of record, the Claimant rescheduled the April 23, 2009 TABE test due to a scheduling conflict. The Claimant was notified of the new TABE test date and time via exhibit D-1.
- 3) The Claimant failed to appear at her scheduled TABE test on May 21, 2009 and a Notice of Decision (included with D-1) dated May 27, 2009 advised the Claimant that a first level sanction was going to be applied to her case for “Failing to keep appointment” effective July 2009.
- 4) The Claimant contends that her boyfriend (-----) had knee surgery and between taking care of him as well as her 14-month-old child, she simply forgot to appear for the scheduled TABE test. The Claimant contends that she was overwhelmed and feels like she should have been excused for failing to appear. She further stated that she called the morning of the TABE test but was advised that she could not attend because the test had already started.
- 5) The Department contends that “forgetting” to keep a required appointment fails to meet good cause criteria. It is for this reason that good cause was not granted and the 1<sup>st</sup> level sanction against the Claimant is proposed.

- 6) 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.
- 7) 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.  
1<sup>st</sup> Offense- 1/3 reduction in the check amount for 3 months.  
2<sup>nd</sup> Offense- 2/3 reduction in the check amount for 3 months.  
3<sup>rd</sup> Offense and all subsequent offenses-Ineligibility for cash assistance for 3 months or until compliance, whichever is later.
- 8) 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 1<sup>st</sup> level sanction results in a 1/3 reduction in WV Works benefits for a period of 90 days.
- 3) The evidence reveals that the Claimant failed to appear for her scheduled TABE test on May 21, 2009. The Claimant has been forthright about why she failed to appear and indicated she was overburdened with her personal life and simply forgot. While the Claimant demonstrated personal responsibility when she rescheduled the previous TABE test, and she does not present a history of PRC infractions, the WV WORKS Worker has the discretion to apply a sanction when good cause criteria is not met for failing to comply with the PRC.
- 4) Based on the evidence, the Department's proposal to impose a 1<sup>st</sup> level sanction in the Claimant's WV WORKS case is affirmed.

**IX. DECISION:**

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the Department's proposal to apply a 1<sup>st</sup> 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 \_\_\_ Day of August 2009.**

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**Thomas E. Arnett  
State Hearing Officer**