



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

September, 16 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 14, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your West Virginia Works benefits based on the application of a third program 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 fails to 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 a termination in the assistance check for three months. (West Virginia Income Maintenance Manual Section 13.9)

Information submitted during the Hearings process shows that you failed to submit correspondence regarding your incapacity on a timely basis to the Department.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to apply a third sanction to your West Virginia Works case and terminate your benefits.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Pamela S. Mills, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-1483

**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 September 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. The hearing was convened in person at local office on September 14, 2009 on timely appeal requested June 30, 2009. It should be noted that the Claimant is receiving continued benefits pending a hearing decision. It should also be noted that a Pre-Hearing Conference was held on July 06, 2009.

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

-----, Witness

Janielle Sigler, Family Support Specialist

Pamela S. Mills, Family Support Supervisor

Presiding at the hearing was Eric L. Phillips, 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 West Virginia Works benefits due to imposition of a third sanction, based on Claimant's inability to keep appointment.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.25, 12.3, 13.9, 13.10, 24.1, 24.4, 24.5 and 24.11

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

D-1 Appointment Letter dated 6/08/09

D-2 Notification of Good Cause Appointment dated 6/18/09

Claimant's Exhibits:

None

FINDINGS OF FACT:

- 1) Claimant and his three children are current West Virginia Works recipients. Claimant states that he is currently disabled and not able to participate with the work activity requirements of the program, due to permanent nerve damage in his back and legs sustained in an automobile accident over four years ago.
- 2) Department states that Claimant was exempt from participation in a work activity for the last six months, estimated time of December 2008 through June 2009. Department assumes that exemption from the work activities expired in June 2009, and a corresponding appointment letter (Departmental Exhibit D-1) was issued June 8, 2009.

Exhibit D-1 states in pertinent part:

“As a condition of your eligibility for financial assistance from the Department of Health and Human Resources, you are currently enrolled or are required to enroll for employment related services with WV Works.

Your appointment has been scheduled for:

Date: 6/15/2009

For: 11:30

The purpose of this appointment is to place you in an activity such As Adult Basic Education Classes, Community Work Experience Program, GED, Job Search, Parenting, Vocational Training, Mentoring, Community Service or Family Planning.”

- 3) Department states Claimant failed to appear for appointment listed in Exhibit D-1 and a Notification of Good Cause (Departmental Exhibit D-2) was issued June 25, 2009.

Departmental Exhibit D-2 states in pertinent part:

A sanction will be applied to your assistance group effective 7/09. This is the third or subsequent sanction and will continue for 3 months or until compliance.

We have scheduled a GOOD CAUSE interview for -----
----- on 6/25/09 at 09:30 at the office address listed above.

If this appointment is NOT kept, the sanction listed above WILL be applied to your benefits.

- 4) Department claims Claimant failed to keep good cause appointment to discuss sanction and subsequent third sanction was imposed.
- 5) Claimant purports he was scheduled to attend legal proceedings involving the custody of his three children. Claimant maintains he relayed information regarding the proceedings to the Department, but also contends he forgot about the scheduled appointment for the good cause interview. Claimant admits that a second physician's statement was submitted to the department on July 29, 2009 stating that Claimant was unable to participate in any activities from a period of March 2009 – June 2009.
- 6) Department did not submit a Personal Responsibility Contract but claims that keeping all appointments is a requirement for continued eligibility in the West Virginia Works Program.

- 6) Policy found in West Virginia Income Maintenance Manual Section 1.25, T, provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the West Virginia Works 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.

West Virginia Income Maintenance Manual Section 24.4 (D-4) states that the worker:

Negotiates the PRC with the client to determine the best means to achieve self-sufficiency and accept personal responsibility.

- 7) West Virginia Income Maintenance Manual Section 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 or until compliance, whichever is later.

- 8) West Virginia Income Maintenance Manual Section 13.10 states:

Exemptions for West Virginia Works are:

- a) Age of child
- b) Domestic violence
- c) Child under six, no available child care
- d) Physical/mental incapacities
- e) Other good cause reasons

- 9) West Virginia Income Maintenance Manual Section 12.3, C (D-4) states:

For WV WORKS purposes, a determination of incapacity must be made to determine if an individual may have good cause for failure to participate in countable activities.

The decision is made by the Worker and/or Supervisor, at the discretion of the Community Services Manager or the Medical Review team, depending on the length of the expected incapacity. If the incapacity is obvious and not expected to continue for an extended period, no medical verification is required but the

Worker must record his findings and justify his decision. For any period of disability or incapacity that is expected to continue for over a 6 month period, the case must be submitted to the Medical Review Team for evaluation.

If the incapacity is not obvious, verification must be provided from a physician, licensed or certified psychologist, surgeon, doctor of osteopathy, or other medically-qualified individual. The verification must include an estimate of the duration of the incapacity. The medical practitioner is not required to state that the individual must be excused from participation. The Worker and/or Supervisor make this decision, based on medical records submitted and any necessary follow-up contact, but the period must not last longer than 6 months. If the incapacity is expected to be longer than a 6 month period, the case must be referred to MRT.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the West Virginia Works benefit group fails to comply with the requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless the worker determines that good cause exists. The penalty for a third offense is a termination of benefits for three months.
- 2) Policy dictates when an individual's incapacity is not obvious; a physician's statement must be submitted to the Department. The statement must include the duration of the individual's impairment, and if the impairment is expected to be longer than a 6 month period, the case must be referred to the Medical Review Team. Through admission by the Department, as well as the Claimant, the incapacity in question has lasted longer than the 6 month requirement and continues to this date. No evidence was submitted during the Hearing process to maintain that Claimant has been evaluated by the Medical Review Team, and granted an extension on the incapacity requirement. A ruling on the length of the incapacity cannot be established, as any such ruling would be based on assumption of the Medical Review Teams decision.
- 3) The Claimant's witness testified she provide notification on length of disability on July 29, 2009 stating a length of incapacity of March – August 2009. However, this notification was submitted to the Department after the inception of the third sanction to terminate the benefits. The Department did not have any information regarding the Claimants physical incapacities, as Claimant failed to appear for scheduled appointments, and was correct in its decision to institute the sanction.

IX. DECISION:

The Department's action to apply a third sanction to the Claimant's West Virginia Works case and terminate benefits is **upheld**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of September 2009.

**Eric L. Phillips
State Hearing Officer**