



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Joe Manchin III  
Governor

Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

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

November 12, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 5, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to impose a sanction against your WV WORKS benefits for failure to participate in a work activity.

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 program is based on current policy and regulations. These regulations provide that if an individual does not comply with requirements found on his Personal Responsibility Contract (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 (West Virginia Income Maintenance Manual § 13.9 A).

The information submitted at your hearing revealed that you failed to provide good cause for your failure to participate in your assigned work activity as indicated on your PRC.

It is the decision of the State Hearings Officer to **Uphold** the action of the Department to impose a sanction against your WV WORKS benefits.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Judy Bell, Family Support Supervisor

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-1876**

**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 November 5, 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 fair hearing was convened on November 5, 2009 on a timely appeal, filed September 3, 2009.

It should be noted here that the claimant's benefits under the WV WORKS program have not been continued pending a decision.

**II. PROGRAM PURPOSE:**

The Program entitled WV WORKS is administered by the West Virginia Department of Health & Human Resources.

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

-----, Witness for Claimant

-----, Family Support Specialist

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

This hearing was held by videoconference.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's decision to impose a sanction against Claimant's WV WORKS benefits was correct.

**V. APPLICABLE POLICY:**

WV Income Maintenance Manual § 1.25 and 13.9 A

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Personal Responsibility Contract dated July 14, 2009
- D-2 Clothing Voucher dated July 16, 2009
- D-3 WV Income Maintenance Manual § 1.25 T, 13.9, 13.10 and 24.5
- D-4 Participant Time Sheet for July 2009
- D-5 Doctor's Excuses dated August 3, 2009, August 5, 2009 and August 10, 2009
- D-6 Good Cause Appointment Letter dated August 7, 2009
- D-7 Correspondence from ----- dated October 28, 2009

**Claimants' Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) Claimant applied for WV WORKS and had a Personal Responsibility Contract (PRC) completed on July 14, 2009 for him to be placed in a work activity (D-1). Claimant was unable to be placed with the [REDACTED] Public Library and did not have reliable transportation to work for the City of [REDACTED]. Claimant asked to be placed with [REDACTED] as it was located in [REDACTED] WV where he lived.

Claimant's PRC was updated on July 20, 2009 to reflect his placement with [REDACTED] weatherization program effective July 21, 2009 (D-1).

- 2) -----, Claimant's caseworker, received Claimant's time sheet from CASE on August 11, 2009. For the month of July 2009, Claimant worked a total of 70 hours for [REDACTED]. However, the supervisor's comments section indicated Claimant "sleeps while on the job" (D-4 and D-7).

-----spoke with -----, site coordinator for [REDACTED] weatherization program and was informed that Claimant showed up to work but that he did not work while there and slept in the back of the van. Claimant's placement with [REDACTED] was terminated for his failure to perform his work duties.

- 3) A sanction against Claimant's WV WORKS benefits was proposed and a good cause appointment was held on August 13, 2009. Claimant attended the good cause appointment and presented three (3) doctor's excuses, exempting him from work from August 3, 2009 through August 16, 2009 (D-5).

Claimant was scheduled to return to the local office September 3, 2009 as his doctor's excuses did not cover the time period he worked for [REDACTED] or would explain why he would be sleeping on the job. Claimant advised -----that everyone else at [REDACTED] hid to get out of working and requested a hearing. The sanction was imposed effective September 2009 as Claimant failed to provide good cause for his failure to fulfill his work requirements as indicated on the PRC.

- 4) Claimant testified that he asked to work at [REDACTED] due to his transportation problems. He stated he would sleep in the front of the work truck along with the other workers and supervisors. They all rode together in the truck and the other workers would park behind a building around 3:30 in the afternoon to get out of working the remainder of the day. Since they all rode together, he had no choice in the matter. He denied ever sleeping in the back of the van and stated the foreman never saw him sleeping.

Claimant stated he was unable to do as much work as the others since he was not qualified to install furnaces and could not climb ladders to work on roofs due to his weight.

- 5) WV Income Maintenance Manual § 1.25 states:

Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in the imposition of a sanction against the Assistance Group (AG).

- 6) WV Income Maintenance Manual § 13.9 A states:

When a member of the Assistance Group (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.

#### **VIII. CONCLUSIONS OF LAW:**

- 1) As dictated by policy, Claimant was required to participate in a work activity for 35 hours a week which was specified on his PRC. Claimant was dismissed from his placement at [REDACTED] as it was reported by his site supervisor that he was sleeping on the job.
- 2) Although Claimant provided doctor's excuses, they did not cover the time period he worked at [REDACTED] or excuse him from any specific work duties. Claimant failed to provide good cause for his failure to participate in his assigned activity.
- 3) Claimant's WV WORKS benefits were correctly reduced for his failure to meet the work requirements of his PRC.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a sanction on Claimant's WV WORKS benefits for failure to participate in an assigned work activity.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12<sup>th</sup> day of November 2009.**

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**Kristi Logan  
State Hearing Officer**