



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

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

November 24, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 26, 2009. Your hearing request was based on the Department of Health and Human Resources' action to reduce your benefits under the WV WORKS Program based on the application of a second (2nd) 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 second offense, the sanction consists of a 2/3 reduction in the check amount for three 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 action to apply a 2nd 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
Mike Spurgeon, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-1893

**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 24, 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 October 26, 2009 on a timely appeal filed September 19, 2009.

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

Mike Spurgeon, 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. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to reduce the Claimant's benefits and services through the WV WORKS Program based on the imposition of a 2nd sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 1.25, 13.9, 24.3 & 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- A Manual Notice [notification letter] of Second Sanction dated 8/21/09
- B Computer Generated Notice of Second Sanction dated 8/26/09
- C WV Income Maintenance Manual 1.25, T
- D WV Income Maintenance Manual 10.4, D.8.b
- E WV Income Maintenance Manual 13.2, B
- F WV Income Maintenance Manual 13.6, B
- G WV Income Maintenance Manual 13.9
- H WV Income Maintenance Manual 13.11
- I WV Income Maintenance Manual 24.4, D
- J PRC [Personal Responsibility Contract] Part 2
- K Community Service Participation Agreement
- L Participation Time Sheet for August 2009
- M Doctor's Assessment Form dated 8/27/09
- N Doctor's Assessment Form dated 9/17/09
- O Doctor's slips dated 6/5/09, 7/22/09, 8/19/09, 8/25/09 and 9/16/09
- P EBT Transaction Detail for 8/19/09 at 7:55 pm

VII. FINDINGS OF FACT:

- 1) The Claimant was notified that a second (2nd) level sanction was being applied to her WV WORKS case in correspondence dated August 21, 2009 (Exhibit A) and August 26, 2009 (Exhibit B). The Claimant was advised that a 2nd sanction was being imposed because she failed to comply with the terms of her Personal Responsibility Contract, hereinafter, PRC. As a result, the Claimant's WV WORKS benefits were reduced from \$301 to \$101 per month effective October 1, 2009.

- 2) The Department's representative, Mike Spurgeon, submitted evidence to indicate the Claimant signed her PRC (Exhibit J) and her Community Service Participation Agreement (Exhibit K) on June 12, 2009. Pursuant to Exhibits J and K, and stipulated as a matter of record, the Claimant agreed to attend her community service activity a minimum of 23 hours per week (85 hours per month). In addition to a minimum participation requirement, the Claimant's PRC indicates that the Claimant must contact her worker of any problems that may interfere with attending activities as assigned or keeping appointments. The Claimant was subsequently assigned to the [REDACTED] to satisfy the requirements of her PRC and Community Service Participation Agreement.
- 3) On August 21, 2009, the Department's representative was contacted by -----, site supervisor at the [REDACTED] who reported the Claimant left early on August 17, 2009 and she neither returned to work nor called to explain why she was absent. -----reported that she called the Claimant out of concern and the Claimant reported that she had been ill. Upon receipt of this information, the Department issued the sanction notice letters (Exhibits A and B) and scheduled the Claimant for a Good Cause appointment on September 9, 2009.
- 4) On August 27, 2009, the Claimant contacted the Department regarding the sanction notice letters and was advised she would need to provide a detailed doctor's statement at the good cause appointment verifying a diagnosis, prognosis, how long the incapacity was expected to last, employment limitations and whether or not she was able to attend a classroom activity. Because the Claimant advised that her next doctor's appointment was not until September 16, 2009, the good cause appointment was changed to September 17, 2009 and the Claimant was provided Exhibit M to be completed by her physician.
- 5) The Department submitted Exhibit L, Claimant's Participant Time Sheet for August 2009, to show that the Claimant had six absences in August and that she documented 71 hours of participation, failing to meet her required monthly participation hours of 85. Relevant to this appeal, this document verifies the Claimant was absent during the dates 8/18/09 through 8/21/09.
- 6) The Claimant appeared for her good cause appointment on September 17, 2009 and provided information found in Exhibit O (physician's note on prescriptions/Rx pads). Documentation relevant to this appeal is the Rx pad dated 8-19-09, which states - "Pt can return to work on 8-24-09." The Department's representative testified that this document does not satisfy the information requested - diagnosis, prognosis, how long the incapacity was expected to last, employment limitations (requested in Exhibit M) - and fails to explain why the Claimant did not contact him or the [REDACTED] to advise she was ill and could not participate in her assigned work activity.

- 7) The Claimant testified that she had been adjusting to a new medication and that she was having difficulty functioning. She testified when she was contacted by ---- (site supervisor at the [REDACTED]), she told her that she was in pain from her Fibromyalgia and that she was going to contact her doctor. The Claimant testified that she submitted the doctor's statement dated August 19, 2009 and thought that if these hours were excused, she would have met the required work participation average of 23 hours per week. The Claimant testified that she has Fibromyalgia and that her physician would not complete the form requiring a diagnosis/prognosis because it is not his field of specialty. He has reportedly referred her to a rheumatologist for a more thorough evaluation. The Claimant testified that she did not call the Department and advise her worker of her illness because she was "out of it."
- 8) Evidence identified as Exhibit P, however, demonstrates that the Claimant made a purchase with her Supplemental Nutrition Assistance Program (SNAP) EBT (Electronic Benefit Transfer) card on August 19, 2009. In the absence of evidence to the contrary, this evidence indicates the Claimant was capable of placing a phone call to report she was too ill to work.
- 9) West Virginia Income Maintenance Manual, Chapter 24.3, B provides information specific to absences from an assigned work activity and states that workers must determine whether absences are excused or unexcused. Participation for Work-Eligible Individuals is calculated on the actual hours of attendance or participation each month and converted to a weekly average. This section of policy goes on to state - Excused absences of up to 16 hours/month, not to exceed a maximum of 80 hours in the 12-month period, including the current and the preceding 11 months, may be counted as hours worked in that month. The hours worked include the excused hours when participation did not actually occur. An excused absence includes illness or other good cause which prevented participation. It is the responsibility of the worker to determine if the absence is excused or unexcused based on contact with the employer/contractor and client documentation. A determination of good cause may only be made by the WV Works staff.
- 10) 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.
- 11) 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 or until compliance, whichever is later.

- 12) West Virginia Income Maintenance Manual, Chapter 13.10 states 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 2nd level sanction results in a 2/3 reduction in WV WORKS benefits for a period of three (3) months.
- 3) The Department's reason for imposing the 2nd level sanction is twofold – 1) The Claimant failed to meet the required weekly/monthly participation rate, and 2) The Claimant absent from her work activity during the period of August 18, 2009 through August 21, 2009 and failed to contact her worker to advise of her absence. Pursuant to existing policy, up to 16 hours per month (not to exceed a maximum of 80 hours in the 12-month period) can be excused by the Department if the worker determines the absence should be excused. The Claimant's explanation of why her physician would not provide the information requested (diagnosis, prognosis etc...) is reasonable, and therefore, she could have potentially been excused for up to 16 hours due to illness and met the required 85-hour monthly work requirement (71 hours worked + 16 excused = 87) for August 2009. However, the fact remains that the Claimant violated the terms of her PRC when she failed to phone the Department and report she was sick / unable to complete her assigned work activity.
- 4) Based on the evidence, the Department is correct to impose a 2nd level sanction in the Claimant's WV WORKS case.

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 **uphold** the Department's action to apply a 2nd level sanction to your WV WORKS case.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of November, 2009.

**Thomas E. Arnett
State Hearing Officer**