



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 W Washington St.  
Charleston, WV 25313  
304-746-2360 ext 2227

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

March 18, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 18, 2008. Your hearing request was based on the Department of Health and Human Resources' closure of your WV Works benefits due to a third level sanction.

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. Some of these regulations state as follows: Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC (Personal Responsibility Contract) after signature, results in imposition of a sanction against the AG. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred (West Virginia Income Maintenance Manual, Chapter 1.25.T).

The information submitted at your hearing revealed that you did not comply with the requirements of your Personal Responsibility Contract (PRC) and that you failed to establish good cause.

It is the decision of the State Hearings Officer to **uphold** the action of the Department to close your WV Works benefits due to a sanction.

Sincerely,

Jennifer E Butcher  
State Hearings Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Gary Keen, Family Support Specialist

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

-----,

**Claimant,**

**v.**

**Action Number: 08-BOR-2087**

**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 March 18, 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 18, 2008, on a timely appeal filed August 18, 2008.

It should be noted here that the Claimant's benefits have not been continued pending a hearing decision.

**II. PROGRAM PURPOSE:**

The Program entitled WV 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  
Gary Keen, Family Support Specialist

Presiding at the Hearing was Jennifer Butcher, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct to impose a sanction terminating WV Works benefits.

### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 24.4.D

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

#### **Department's Exhibits:**

- D-1 West Virginia Income Maintenance Manual, Chapter 13.9
- D-2 Case comments dated August 1 and 6, 2008
- D-3 Case comments dated August 15, 2008
- D-4 West Virginia Income Maintenance Manual, Chapter 13.10

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

- 1) According to the testimony from the Department and case comments (Exhibit D-1), ----  
- was assigned to attend "SPOKES" job readiness program on August 1, 2008. Mr. Keen called "SPOKES" to check on ----'s attendance for the start date. The Claimant had not attended for the day. The first sanction was placed on the case and a good cause appointment was set for August 15, 2008 at 11:00 AM.
- 2) On August 6, 2008, Mr. Keen reported and according to case comments (Exhibit D-2), there had not been a timesheet turned in on August 5, 2008 for the work activity completed in the month of July. Therefore, the second sanction was placed on the [REDACTED] case.
- 3) The Claimant testified she was in the office on August 15, 2008 during the afternoon to reschedule her appointment that she had previously missed. She stated she had been staying in [REDACTED] since the end of July caring for her mother who had been in a car

wreck. ----- stated she tried to call and leave a message before she left for [REDACTED]. She stated the phones “were down” and she could not leave a message.

4) The Department agreed that the phones were not operating properly during the months of July and August of 2008. But, according to (Exhibit D-1), “the worker determined that good cause exists”. Mr. Keen stated that the two (2) weeks that had lapsed where there was no contact with the Claimant was too long and that because of the lapse in time, good cause would not be granted.

5) The West Virginia Income Maintenance Manual, Chapter 13.9 (Exhibit D-6) on WV Works Sanctions states, in pertinent part:

When a member of the 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.

6) Testimony from the Department confirmed that the Claimant failed to attend this good cause interview. For this reason, the Department imposed the sanction without further consideration. Because the sanction was a third-level sanction, it closed the WV Works benefit.

7) The West Virginia Income Maintenance Manual, Chapter 13.9.A (Exhibit D-6) defines the sanction levels as follows:

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  
Offenses = Ineligibility for cash assistance for 3 months.

8) The West Virginia Income Maintenance Manual, Chapter 13.10 states, in pertinent part:

### **13.10 GOOD CAUSE FOR FAILURE TO PARTICIPATE FOR WV WORKS**

All mandatory work-eligible individuals must be placed into a relevant and a current component for tracking and monitoring purposes on approval date. The participant must remain in that component whether or not they are working, cooperating, or sanctioned until either the case is closed or the Case Manager and participant agree to change the component. Not meeting participation requirements or being sanctioned are not reasons for disenrollment of the participant from their assigned component(s).

Some reasons for granting good cause for temporarily not meeting participation requirements are life events or problems such as, but not limited to:

- The death of a spouse, parent, child, or stepchild.
- In accordance with the Family and Medical Leave Act (FMLA) of 1993, an acute, life threatening illness of a spouse, parent, or child that requires the client's immediate attention. This does not include individuals who are exempt from participation due to caring for a disabled family member as outlined in section 13.8.
- The minimum suitability standards for the specific activity are not met. See Sections 24.5 – 24.13 for minimum requirements. If none are listed for the activity, the worker must determine if the activity placed unreasonable requirements on the client. Individuals granted good cause for this reason must be scheduled an appointment or home visit to review the situation and possible PRC update.

The worker must determine whether or not the client is meeting the requirements, attempting to comply with the best of his ability, understands the requirements, and the sanction process. The worker has considerable discretion in imposing a sanction. The worker may determine that the requirement was inappropriate based upon additional assessment. An appointment to update the PRC and place the individual in another component must be scheduled as soon as possible. In addition, the worker may determine that not applying a sanction in a particular situation provides more motivation for future participation than the imposition of a sanction. However, once a sanction has been imposed, it cannot be stopped, until the appropriate time has elapsed.

- The parent, an included non-parent caretaker, or a non-recipient work-eligible individual quits employment or fails to participate in his assigned activity due to enrollment and full-time attendance in school, training, or an institution of higher learning. The PRC must be updated and these individuals should be placed in the VT, AB, or CL components as soon as possible.

- 9) The Department worker testified that the Claimant did not attend the good cause appointment and failed to reschedule another appointment after coming into the office on Friday afternoon August 15, 2008.

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

- 1) The West Virginia Income Maintenance Manual, Chapter 1.25.T, states, in pertinent part:

Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in imposition of a sanction against the AG. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred.

- 2) The Department clearly demonstrated the stated PRC expectations for the Claimant. Testimony confirmed that the Claimant failed to complete a PRC assignment and failed to attend a good cause appointment offered by the Department to explain her absence from the "SPOKES" job readiness assignment. Although the Claimant stated in her testimony that she tried to call before she left for [REDACTED] the length of time that she was gone was not acceptable to the worker. The Claimant may have called the Department worker, however, the Claimant failed to show any evidence useful to establish good cause either presently or at the time of the good cause interview that she missed.

### **IX. DECISION:**

It is the decision of the State Hearings Officer to **uphold** the action of the Department to apply a third-level sanction terminating the Claimant's WV Works benefits.

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

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 18<sup>th</sup> day of March, 2009.**

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**Jennifer Butcher**  
**State Hearings Officer**