



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

February 6, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 3, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the West Virginia Works Program based on the application of a third (3<sup>rd</sup>) 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 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 third offense and all subsequent offenses, the sanction consists of ineligibility for cash assistance for 3 months or until compliance, whichever is later. 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)

The information submitted at your hearing reveals that you failed to comply with the requirements on your PRC. Although you allege non-receipt of the TABE test scheduling notice, your failure to appear at the good cause appointment, without explanation, further demonstrates non-compliance with PRC requirements.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to apply a sanction in your WV WORKS case. A 3<sup>rd</sup> sanction will be applied to your WV WORKS case effective March 1, 2009.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: 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: 08-BOR-2369**

**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 February 6, 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 originally scheduled to convene on December 18, 2008 but was rescheduled at the request of the Claimant due to illness and convened on February 3, 2009 on a timely appeal, filed October 28, 2008.

It should be noted that WV WORKS benefits have 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  
Kim Cox, FSS, DHHR

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 or not the Department was correct in its proposal to terminate the Claimant's benefits and services through the WV WORKS Program based on the imposition of a 3<sup>rd</sup> sanction.

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

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 13.10 & 24.4

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

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

- D-1 WV Works – Personal Responsibility Contract (PRC) – Part 2 of 2 – dated 9/16/08
- D-2 Appointment notice for TABE testing dated 10/7/08
- D-3 Notice of Decision dated 10/17/08
- D-4 WV Income Maintenance Manual, Chapter 1.25
- D-5 WV Income Maintenance Manual, Chapter 13.9
- D-6 WV Income Maintenance Manual, Chapter 24.4

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

- 1) On September 16, 2008, the Claimant signed her Personal Responsibility Contract agreeing to the following:
  - To keep all scheduled appointments with DHHR for testing, job placements, interviews, referrals, etc.
  - To report all changes in household within 10 calendar days
  - To take TABE test 9/18/08 @ 9:30 a.m. at the [REDACTED] Co. DHHR Office.
  - To return completed doctor's statement from Dr. \_\_\_\_\_ & [REDACTED].
- 2) The Claimant's September 18, 2008 TABE test was rescheduled at the request of the Claimant when she phoned the Department and indicated she would be unable to take the test due to illness. On or about October 7, 2008, the Claimant was provided written notice (D-2) that her TABE test was rescheduled on October 16, 2008 at 9:30 a.m.

- 3) The Claimant failed to appear for the October 16, 2008 scheduled TABE test, without notice, and on October 17, 2008, a Notice of Decision (D-3) was sent to the Claimant advising that her WV Work (cash assistance) benefits would stop effective October 31, 2008 due to the imposition of a third (3<sup>rd</sup>) sanction in her case. The reason provided on the notice is failure to comply with the requirements of the Personal Responsibility Contract (PRC). This notice goes on to advise the Claimant that a good cause interview was scheduled on October 24, 2008 at 10:30 a.m. and if this appointment is not kept, the sanction will be applied to her benefits.
- 4) The Claimant failed to appear for her scheduled good cause interview on October 24, 2008 but appeared at the ██████████ County DHHR office on October 28, 2008. It was at this meeting that the Claimant alleged she did not receive the written notice advising of the scheduled TABE test.
- 5) Testimony received at the hearing reveals that the TABE testing scheduling notice (D-2) was sent to the Claimant's current mailing address and it was not returned by the Post Office. More importantly, the Claimant is not contesting whether or not she received the October 17, 2008 Notice of Decision (D-3) advising of the sanction and subsequent good cause appointment.
- 6) Policy found in the West Virginia Income Maintenance Manual, Chapter 1.25, T, 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 ' 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) West Virgin Income Maintenance Manual ' 13.9 (D) states that 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.
- 9) West Virginia Income Maintenance Manual ' 13.9 (C) states that the imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing decision.

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

- 1) Policy states that 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.

- 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. A third-level sanction, and all subsequent offenses, result in ineligibility for cash assistance for 3 months or until compliance, whichever is later.
- 3) The evidence confirms that the Claimant failed to appear for her TABE test without notice. While the Claimant contends that she did not receive the October 7, 2008 TABE test scheduling notice, this notice was sent to her current mailing address and was not returned to the Department by the Post Office. Moreover, the Claimant failed to appear for her good cause appointment scheduled on October 24, 2008 without notice or explanation.
- 4) Whereas the evidence demonstrates that the Claimant did not attempt to establish good cause for failing to adhere to her PRC, the Agency has correctly proposed applying a 3<sup>rd</sup> sanction to her WV WORKS case.
- 5) Pursuant to WV WORKS Policy, the sanction will be imposed effective March 1, 2009 - the month following the Fair Hearing Decision.

**IX. DECISION:**

After reviewing the information presented during the hearing, and the applicable policy and regulations, I am ruling to **uphold** the proposal of the Agency to apply a 3<sup>rd</sup> sanction to your WV WORKS benefits. The sanction will be imposed effective March 1, 2009.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 6<sup>th</sup> Day of February 2009.**

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**Thomas E. Arnett  
State Hearing Officer**