



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

April 8, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 26, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your benefits under the West Virginia Works Program based on the application of a first (1st) 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 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 first offense, the sanction consists of 1/3 reduction in the check amount for 3 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 proposal to apply a 1st 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
James Miller, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-633

**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 April 8, 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 March 6, 2009 but was rescheduled when the State Office Complex in Fairmont was closed and convened on March 26, 2009 on a timely appeal filed February 3, 2009.

It should be noted that benefits have continued pending the 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
-----, Claimant's boyfriend
James Miller, 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 the Department was correct in its action to reduce the Claimant benefits and services through the WV WORKS Program based on the imposition of a 1st sanction.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- A. Hearing Summary
- B. PRC, Part 2 (signed on 11/18/08)
- C. 12/08 Timesheet (accompanied by 5 documents submitted for excused absences)
- D. 1/09 Timesheet (accompanied by 2 documents submitted for excused absences)
- E. Spokes Progress Reports
- F. Notification of Sanction (Notice of Decision dated 1/27/09)
- G. IG-BR-29 (Hearing/Grievance Record Information)
- H. Notification of hearing (dated 2/12/09 & 3/12/09)
- I. Manual Sections 1.25.T., 13.9, 24.4 and 25.3.B.

VII. FINDINGS OF FACT:

- 1) The Claimant signed her Personal Responsibility Contract (Exhibit B), hereinafter PRC, on November 18, 2008 agreeing to attend Spokes Class beginning November 24, 2008 – Monday through Friday, 8:30 a.m. to 3:00 p.m., get positive evaluations and turn in a timesheet by the 5th of each month.

- 2) On or about January 27, 2009, the Claimant was notified via a Notice of Decision that her WV Works benefits would decrease from \$301 to \$201 effective March 1, 2009. This notice states, in pertinent part:

A sanction will be applied to your assistance group effective 3/09. This is the first sanction and will continue for 3 months.

Your WV WORKS benefit amount before any repayment is taken out will be reduced by 1/3.

This sanction is being applied due to the failure of [REDACTED] to meet the terms of the Personal Responsibility Contract by failing to attend an assigned activity.

- 3) The Department's representative purported that the Claimant is required to participate in a work activity in average of 30-hours per week as a condition of eligibility for WV Works cash assistance. The Department cited the Claimant's PRC (Exhibit B) and noted the requirements agreed upon by the Claimant, specifically – Enroll in Spokes Class and Attend Mon-Fri 8:30-3:00.
- 4) Exhibit C (Timesheet for December 2008) reveals that the Claimant attended Spokes class 55 hours in the Month of December 2008 and was credited with attending 6 additional hours (due to the holidays) for a total of 61 hours. Exhibit D (Timesheet for January 2009) reveals that the Claimant attended Spokes class 32 hours but was credited 12 additional hours (44 total hours) for approved holidays.
- 5) The Department noted that while the Claimant submitted legitimate medical excuses (5 in December 2008 and 2 in January 2009), the excused absences fail bring the Claimant's total participation to the 30-hour weekly average for either month (December 2008 or January 2009). In addition, WV Works policy states that an individual can only have 16 hours of excused absences per month.
- 6) West Virginia Income Maintenance Manual, Chapter 24.3.A, confirms that the Claimant must participate in a WV Works activity at a minimum average of 30-hours per week.
- 7) 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.

- 8) 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.
- 9) 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.
- 10) 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 1st level sanction results in a 1/3 reduction in WV Works benefits for a period of 90 days.
- 3) The evidence reveals the Claimant failed to meet the required 30-hours per week minimum average participation rate in a WV Works activity. While the Claimant was conscientious enough to provide excused absences for some of the days missed, the excused absences fail to bring her average weekly participation rate to the required level for December 2008 or January 2009. Moreover, policy provides that only 16 hours of excused absences can be approved monthly.
- 4) Based on the evidence, the Department is correct to impose a 1st 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, I am ruling to **uphold** the Department's proposal to apply a 1st level sanction to your WV Works benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of April 2008.

**Thomas E. Arnett
State Hearing Officer**