



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 17, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 9, 2009. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your West Virginia Works benefits based on the application of a first 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 fails to 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 a 1/3 reduction in the assistance check for three months. (West Virginia Income Maintenance Manual Section 13.9)

Information submitted at your hearing demonstrates that you were non-compliant with requirements listed on your Personal Responsibility Contract.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to apply a first program sanction to your West Virginia Works case.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Denese Lamp, FSS, DHHR

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-785**

**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 June 17, 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 originally scheduled for April 9, 2009, but was rescheduled after the Claimant established good cause for failure to attend. The fair hearing was then scheduled for June 10, 2009, but was rescheduled at the request of the Department. The hearing was convened via videoconference on June 9, 2009 on a timely appeal filed February 24, 2009.

It should be noted that the Claimant is receiving continued benefits pending a hearing decision.

**II. PROGRAM PURPOSE:**

The program entitled West Virginia 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  
Denese Lamp, Family Support Specialist, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 proposal to reduce the Claimant's benefits through the West Virginia Works Program based on the application of a first sanction.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Sections 1.25, 12.3, 13.9, 13.10, 24.1, 24.4, 24.5 and 24.11

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

**Department's Exhibits:**

- D-1 Notice of Decision dated February 27, 2009
- D-2 Participant Time Sheets
- D-3 West Virginia Works Personal Responsibility Contracts signed on July 1, 2008 and February 2, 2009
- D-4 West Virginia Income Maintenance Manual Sections 12.3, 13.10, 24.4, 24.5 and 24.11
- D-5 Enrollment information from [REDACTED] College
- D-6 Letter from Dr. [REDACTED]
- D-7 Hearing request and information
- D-8 Department's hearing summary

**Claimant's Exhibits:**

- C-1 Claimant's hearing summary
- C-2 Medication information
- C-3 Medical documentation

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of West Virginia Works benefits and signed a Personal Responsibility Contract, hereinafter PRC, (D-3) on July 1, 2008, agreeing to attend [REDACTED] College full-time and continue work in her elected position as town recorder for the Town of ----- . The Claimant also agreed on the PRC to notify the worker of changes in her situation.

- 2) On February 27, 2009, the Department sent the Claimant a Notice of Decision (D-1) informing her that a first sanction would be applied to her West Virginia Works benefits effective April 2009 based on her failure to meet participation requirements by attending college on a regular basis. A good cause appointment was scheduled for February 27, 2009.
- 3) The Family Support Specialist (FSS) testified that the Claimant did not meet her required participation rate from September 2008 through February 2009 (with the exception of December 2008 when the Claimant provided a physician's statement excluding her from participation in classes). The statement from Dr. [REDACTED] dated November 17, 2008 and received by the Department on December 6, 2008, states:

----- is a patient of mine at the [REDACTED]  
[REDACTED] She suffers from multiple, progressive degenerative diseases requiring her to take sedating pain medications. In addition, she has recently had problems with syncope and frequent falls.

For this reason, I feel that she is not physically able to attend formal lectures and classroom instruction. She has retained her cognitive function. Should you be able to facilitate her completing her class work assignments from home, or if an alternative learning environment could be facilitated, this patient would greatly benefit.

The letter does not include an anticipated duration for the Claimant's medical condition.

The FSS testified that the Claimant chose to re-enroll in [REDACTED] College in January 2009. She stated that the Claimant signed a new PRC on February 2, 2009 (D-3), again agreeing to attend [REDACTED] full-time and to notify the worker of changes in her situation. The Claimant submitted her January 2009 participant time sheets (D-2) from [REDACTED] and the Town of -----, and the worker determined that she had only completed 21 of the 78 hours required to meet her January participation requirement. The worker indicated that the Claimant can receive credit for 12 credit hours per week plus 12 hours of study time. The Claimant was given credit for Martin Luther King Day, a school holiday, however she could not be given credit for days she was unable to attend due to inclement weather.

Because the Claimant voluntarily re-enrolled in college after providing the doctor's statement in November 2008, the FSS proposed a first sanction based on failure to comply with PRC requirements. It should be noted that the Department is currently evaluating the Claimant for a potential incapacity/disability determination.

The worker stated that she and the Claimant conferred with the West Virginia Works Supervisor and the county Community Services Manager on February 24, 2009 in regard to the Claimant's situation. At that time, the Claimant decided to pursue a fair hearing regarding the proposed sanction.

- 4) The Claimant testified that she was arrested on January 14, 2009, became depressed and did not attend classes. She stated that she was experiencing pain and emotional duress, and

stopped attending classes because she assumed the November 2008 letter from Dr. [REDACTED] would continue to exempt her from participation. The Claimant explained that she did not immediately contact the FSS about her situation because she was heavily sedated and her thought process was altered. In addition, the Claimant stated that she did not wish to inform the worker of changes in her situation because she had an open Child Protective Services (CPS) case and feared that news of her medical condition would reach the CPS staff. She provided an undated letter (C-3) from [REDACTED] of [REDACTED] indicating that she was under the influence of Percocet, Valium and Neuronton, which could cause her to act as though she was “in a high or drunken state.” Ms. [REDACTED] wrote, “When we discussed her doing observations it was decided she should not attend the observations while in this state.” The Claimant also provided information concerning her medications (C-2) and their potential side effects.

5) West Virginia Income Maintenance Manual Section 24.1 states:

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.

WV WORKS expects parents and other caretaker relatives to support their own dependent children and those in their care. Every parent and other caretaker who is included in a payment and any non-recipient Work-Eligible Individual in the household has a responsibility to participate in an activity to help prepare for, obtain and maintain gainful employment.

6) Policy found in West Virginia Income Maintenance Manual Section 1.25, T, provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the West Virginia Works Assistance Group 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.

West Virginia Income Maintenance Manual Section 24.4 (D-4) states that the worker:

Negotiates the PRC with the client to determine the best means to achieve self-sufficiency and accept personal responsibility.

7) West Virginia Income Maintenance Manual Section 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.

Reasons for which good cause can be established are addressed in Section 13.10 of the Income Maintenance Manual. Physical/mental incapacity is listed as a reason for which good cause can be established.

8) West Virginia Income Maintenance Manual Section 12.3, C (D-4) states:

For WV WORKS purposes, a determination of incapacity must be made to determine if an individual may have good cause for failure to participate in countable activities.

The decision is made by the Worker and/or Supervisor, at the discretion of the Community Services Manager or the Medical Review team, depending on the length of the expected incapacity. If the incapacity is obvious and not expected to continue for an extended period, no medical verification is required but the Worker must record his findings and justify his decision. For any period of disability or incapacity that is expected to continue for over a 6 month period, the case must be submitted to the Medical Review Team for evaluation.

If the incapacity is not obvious, verification must be provided from a physician, licensed or certified psychologist, surgeon, doctor of osteopathy, or other medically-qualified individual. The verification must include an estimate of the duration of the incapacity. The medical practitioner is not required to state that the individual must be excused from participation. The Worker and/or Supervisor make this decision, based on medical records submitted and any necessary follow-up contact, but the period must not last longer than 6 months. If the incapacity is expected to be longer than a 6 month period, the case must be referred to MRT.

9) West Virginia Income Maintenance Manual Section 24.5, A, 2 (D-4) states that “Any West Virginia Works recipient who must meet a federal participation requirement may elect to participate in any educational activity, regardless of any restrictions in Section 24.5.” This section goes on to state:

The participation must be full-time as defined by the institution or course of study, regardless of the number of hours of actual participation. The client must not be required to participate in any other activity to increase his participation hours to the minimum federal requirement. However, the client may voluntarily participate in any other activity, but no sanction may be imposed for failure to participate in that other activity.

Section 24.11, B (D-4) states that “hours of participation for College are assigned according to the number of hours they attend class, plus 1 hour of study time. For College only, school holidays may be counted, if the student would normally be scheduled to attend class on those days... All other absences must meet the excused absence policy of no more than 16 hours per month and not more than 80 hours per 12-month period.”

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

- 1) Policy states that when a member of the West Virginia Works benefit group fails to comply with the requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless the worker determines that good cause exists. The penalty for a first offense is a 1/3 reduction in the assistance check for three months.
- 2) The Claimant signed a PRC in July 2008 agreeing to attend college, complete work as a town recorder and notify the worker of changes in her situation. While the Claimant was granted a medical exemption from college participation for December 2008, her physician’s statement contained no information concerning the expected duration of her condition and stated that she had retained her cognitive function. The Claimant voluntarily re-enrolled in college in January 2009 and failed to complete her required college participation hours for January 2009.

While the Claimant contended that she was under the influence of medication and did not inform her worker of changes in her circumstances because she feared CPS intervention, she was required – as evidenced by her signature on the PRC - to meet her college participation hours and inform the worker of changes in her situation.

Based on information provided during the hearing, the worker acted correctly in imposing a first sanction on the Claimant’s case based on failure to comply with PRC requirements.

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

The Department’s action to apply a first sanction to the Claimant’s West Virginia Works case is **upheld**.

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

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 17th Day of June 2009.**

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**Pamela L. Hinzman  
State Hearing Officer**