



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 22, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 6, 2009. Your hearing request was based on the Department of Health and Human Resources' termination of your WV WORKS benefits due to a third-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 Assistance Group or non-recipient Work-Eligible Individual does not comply with requirements found on her Personal Responsibility Contract, a sanction must be imposed unless the Worker determines that good cause exists (West Virginia Income Maintenance Manual, Chapter 13.9).

The information submitted at your hearing revealed that you did not comply with your Personal Responsibility Contract, and failed to establish good cause.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to apply a third-level sanction and close your WV WORKS benefits.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Emogene Davis, Family Support Specialist

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

-----,

Claimant,

v.

Action Number: 09-BOR-853

**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 July 22, 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 May 6, 2009 on a timely appeal, filed March 6, 2009.

It should be noted that benefits have been continued through the hearing process.

II. PROGRAM PURPOSE:

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
Emogene Davis, Family Support Specialist

Presiding at the Hearing was Todd Thornton, 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 third-level WV WORKS sanction, terminating benefits to the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 13.10; 24.4.D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Orientation to WV WORKS form
- D-2 WV WORKS Personal Responsibility Contract (PRC), dated December 23, 2008
- D-3 Participant Time Sheet for January 2009
- D-4 Participant Time Sheet for February 2009
- D-5 West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 24.4.D

VII. FINDINGS OF FACT:

- 1) Testimony from the Department indicated that the Claimant – a WV WORKS recipient – failed to meet a requirement of her Personal Responsibility Contract (PRC), and a third-level sanction was imposed February 24, 2009. This sanction would terminate WV WORKS benefits to the Claimant. The Claimant submitted a timely request for Fair Hearing and continued benefits. It should be noted that the Department failed to present as evidence any notification to the Claimant of this proposed action.
- 2) Testimony from the Department explained that the specific PRC violation was a time sheet not submitted by the required deadline. Under the required assignments and activities of the Claimant's PRC (Exhibit D-2), "Turn in your time sheet from Marshall University by the 5th of the following month" is listed. Between the table of assignments and activities and the signature line, the form states, in pertinent part:

I understand that if I do not cooperate/participate with all the assignments/activities listed above that I will be penalized.

The PRC was signed by the Claimant and the Department worker on December 23, 2008.

- 3) The Department and the Claimant agreed that the January 2009 time sheet (Exhibit D-3) was not received by February 5, 2009 – the deadline established in the PRC.

- 4) The Claimant testified that she faxed the required January 2009 time sheet in February 2009, but after the PRC deadline. The Department worker testified that this fax was not received, and that the Claimant could present a fax confirmation sheet at her Good Cause appointment. The Claimant testified that she did not retain the fax confirmation sheet, and was never aware of a Good Cause appointment.
- 5) The Claimant gave testimony explaining her reasons for not submitting the January 2009 time sheet to the Department timely. She stated that there were only two weeks of classes at [REDACTED] in January 2009, that there was no way to track or document her class time for Internet classes, and that she was told that time sheet submission only affected the timing of her mileage reimbursement. The Claimant additionally testified that there were considerable delays in getting her WV WORKS application processed, and receiving her first benefit issuance; she opined that if the Department can be delayed in its processing, that her time sheet delay could be excused as good cause.
- 6) The Claimant and the Department agreed that the original January 2009 time sheet was turned in to the Department when the Department worker made a visit to the Claimant's home on March 2, 2009.
- 7) The West Virginia Income Maintenance Manual, Chapter 13.9, defines sanctions as follows:

A. DEFINITION OF SANCTION

NOTE: Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.

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 1.25.T, provides for the implementation of sanctions, as follows, 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. See Section 13.9 for information about sanctions.

- 9) The West Virginia Income Maintenance Manual, Chapter 13.10 discusses good cause as follows, in pertinent part:

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 to 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.

VIII. CONCLUSION OF LAW:

- 1) Policy for the WV WORKS program requires cooperation with the PRC, unless good cause is established. The Claimant's PRC required her to provide time sheets to the Department monthly, and she failed to do so. The Claimant failed to demonstrate good cause for her non-compliance by claiming a miscommunication of the Department's expectations, or by suggesting that delays on the part of the Department justified her own delay; the expectations were clearly outlined in the PRC that she signed with the Department worker. The Department acted correctly to apply a third-level sanction and close the Claimant's WV WORKS benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to apply a third-level sanction and terminate the WV WORKS benefits of the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of July, 2009.

Todd Thornton
State Hearing Officer