



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

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

May 19, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 13, 2010. Your hearing request was based on the Department of Health and Human Resources' reduction of your WV WORKS benefits through two sanctions.

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, in each instance, 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 Department's reduction of your WV WORKS benefits due to a sanction.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
-----, Family Support Supervisor

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

-----,

Claimant,

v.

Action Numbers: 10-BOR-1041; 10-BOR-1042

**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 May 19, 2010 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 13, 2010 on timely appeals filed February 11, 2010 and March 12, 2010.

It should be noted that benefits have been continued from the second, but not the first, action of the Department.

II. PROGRAM PURPOSE:

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. The goals of WV WORKS are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency, and structure assistance to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Claimant
-----, Family Support Supervisor
-----, 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 two WV WORKS sanctions, reducing 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 Notification of first sanction, dated February 10, 2010; Notification of second sanction, dated March 3, 2010
- D-2 Hearing requests and Hearing/Grievance Record Information (IG-BR-29) forms
- D-3 Personal Responsibility Contract, dated January 21, 2010; Personal Responsibility Contract, dated February 18, 2010; February 2010 Participant Time Sheet
- D-4 E-mails regarding SPOKES class participation
- D-5 Case Comments screen prints
- D-6 West Virginia Income Maintenance Manual, Chapters 1.25; 12.3; 13.9; 13.10; 24.3; 24.9
- D-7 Doctor's excuse; Memorandum dated January 18, 2010

VII. FINDINGS OF FACT:

- 1) -----, Family Support Supervisor for the Department, testified that a sanction was imposed against the Claimant's WV WORKS case due to failure to attend a required activity. The activity was a program known as SPOKES – or Strategic Planning in Occupational Knowledge for Employment and Success – and after the Claimant was dropped from the class due to absences, the Department issued a notice (Exhibit D-1), on February 10, 2010, of a first sanction, reducing WV WORKS benefits.
- 2) -----testified that a second sanction was imposed against the Claimant's WV WORKS case due to the failure to meet the required 128 participation hours for the month of

February 2010, either through SPOKES attendance or through supplemental community service. The notice (Exhibit D-1) advising the Claimant of the second sanction was issued on March 3, 2010.

- 3) The Department presented the Claimant's Participant Time Sheet (Exhibit D-3) for February 2010, which showed that the Claimant attended SPOKES for four days from February 1, 2010 through February 4, 2010, and five days from February 22, 2010 through February 26, 2010. Total monthly hours of 63 listed on the form reflects the sum of 57 actual attendance hours and 6 Federal holiday hours.
- 4) The Claimant signed two (Exhibit D-3) Personal Responsibility Contracts (PRC) – one on January 21, 2010, and another on February 18, 2010 – and both required the Claimant to attend SPOKES class, complete 128 participation hours per month, and to supplement SPOKES hours with community service as needed to meet 128 hours.
- 5) -----testified that the Claimant attended an appointment on February 18, 2010, to establish good cause for missing SPOKES classes. The Claimant testified that she was very ill, and could not get in to see her doctor before February 18, 2010. She testified that the Department was aware of her illnesses. -----testified that the Claimant called the Department prior to the good cause appointment to complain that the SPOKES classes were “demeaning,” and did not indicate at that time that she was ill, nor did she advise the SPOKES instructor that she was ill. At the good cause appointment, the Claimant did not present a doctor's excuse, but did on February 22, 2010. The doctor's excuse (Exhibit D-7) indicated that the Claimant was seen at the [REDACTED] on February 18, 2010, and that she was able to return to work or school on February 22, 2010. A handwritten note on the excuse stated “Please excuse for illness 2-5-10 – 2-22-10.” -----testified that the Department did not accept this excuse as good cause because the physician was attempting to certify the Claimant's illness after the fact.
- 6) The Claimant testified that she had no dispute of the facts as presented by the Department. She testified that she preferred her doctor because her doctor was familiar with her specific illnesses. She testified that she preferred her PRC assignment prior to the SPOKES assignment, and opined that the change in assignments was for personal reasons. The remainder of the testimony from the Claimant was irrelevant.
- 7) 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.

- 8) 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.

- 9) 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.

VIII. CONCLUSIONS 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 attend SPOKES classes, participate in community service, and meet 128 monthly hours of participation through a combination of the first two activities. The Claimant failed to cooperate in these three areas – first by SPOKES class absences, and second by unmet participation hours.
- 2) The Claimant contended that she met good cause due to illness. The Claimant failed to notify either the Department or the SPOKES instructor of her illness at the time. The Claimant did express her dissatisfaction with her change in assignment to SPOKES, both in this hearing and in a phone call prior to the good cause appointment in which she stated she was ill. At the time of her good cause appointment, the Claimant failed to present a doctor's excuse, stating she was unable to see her preferred physician. Her argument that she must see her preferred physician – because that physician was familiar with her medical history – in no way explains why another physician, providing care at the time of the SPOKES absences, could not have issued a simple excuse for those absences. Good cause was not established.
- 3) The Department clearly established that the Claimant did not cooperate with PRC requirements on two separate occasions, and that the Claimant did not have good cause for either instance of non-compliance. The Department was correct to impose two WV WORKS sanctions, and to reduce WV WORKS benefits accordingly.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to apply two sanctions reducing the WV WORKS benefits of the Claimant. The Department may take action to collect any overpaid benefits continued through the hearing process.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of May, 2010.

Todd Thornton
State Hearing Officer