



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

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

May 17, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 2010. Your hearing request was based on the Department of Health and Human Resources' action to reduce your WV WORKS benefits 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 WV 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 action in applying 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
Mike Spurgeon, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1058

**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 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 convened on April 28, 2010 on a timely appeal filed March 23, 2010.

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

Mike Spurgeon, Family Support Specialist (FSS) WVDHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to reduce the Claimant's benefits 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, 13.10, 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision (February 10, 2010)
- D-2 West Virginia Income Maintenance Manual, Chapter 1.25
- D-3 West Virginia Income Maintenance Manual, Chapter 13.9
- D-4 West Virginia Income Maintenance Manual, Chapter 24.4
- D-5 Participant Time Sheet Date Stamped February 12, 2010
- D-6 Participant Time Sheet Date Stamped February 24, 2010
- D-7 Personal Responsibility Contract (PRC) dated September 24, 2009

Claimant's Exhibits:

- C-1 WVU Healthcare record - Verification Claimant was admitted to the hospital on February 3, 2010 and discharged on February 5, 2010.
- C-2 Two articles from the Times West Virginian online page – Last Accessed May 14, 2010

February 6, 2010 - "Power outages, bad road conditions mark major storm" found at <http://timeswv.com/local/x878599209/Power-outages-bad-road-conditions-mark-major-storm> and;

February 17, 2010 – "States snow budget nearly exhausted by February storms" <http://timeswv.com/westvirginia/x626761667/State-s-snow-budget-nearly-exhausted-by-February-storms>

VII. FINDINGS OF FACT:

- 1) The Claimant signed her Personal Responsibility Contract (D-7), hereinafter PRC, on September 24, 2009 agreeing to the requirements contained therein. Among the requirements agreed upon by the Claimant is to submit her Participant Time Sheet by the 5th of each month.
- 2) On or about February 10, 2010, the Claimant was notified via a Notice of Decision (D-1) that her WV WORKS benefits were going to decrease from \$301 to \$201 per month, effective March 1, 2010, due to a first sanction being applied for failure to comply with the requirements of her PRC. This notice goes on to notify the Claimant that a good cause interview was scheduled for her on February 24, 2010 at 9:30 a.m.

- 3) Exhibit D-5 was received by the Respondent on February 12, 2010 and while the Respondent's representative, Mike Spurgeon, noted that the time sheet was late, the primary problem was that it included participation dates for the entire month of February 2010 (i.e. 2/1, 2/4, 2/6, etc...) The month of February (received February 12, 2010) was not over and the Claimant was supposed to submit a Participant Time Sheet for the month of January 2010. The month and year of the Participant Time Sheet is located in the upper left-hand corner and it appears the month of "Feb" was scratched out and January written just above the error. The signatures of the Claimant, as well as the site supervisor, appear on this form certifying the information is correct. The certification statement above the signature sections reads as follows:

I certify that the information on this form is correct to the best of my knowledge and the statements are made in good faith. I know that federal funds are involved and penalties are prescribed by law for willful misrepresentation of facts in order to obtain payments or services.

- 4) Mr. Spurgeon testified that he phoned the Claimant and left a voice message indicating the Participant Time Sheet (D-5) fails to verify participation in her activity for January 2010 and that she would need to provide a corrected copy. The Claimant subsequently provided a corrected copy on February 24, 2010 (D-6) that includes participation dates of 1/20, 1/22, 1/25, 1/27 and 1/29 with mileage reimbursement claims of 15 miles per day. While the Claimant appeared at the Department office long enough to drop off her Participant Time Sheet, the Claimant did not appear for her good cause hearing scheduled that same day (February 24, 2010 at 9:30 a.m.).
- 5) The Claimant testified that she was hospitalized February 3, 2010 through February 5, 2010 (C-1) and she gave the time sheet to her fiancé, who then got it signed by her professor. She testified that is why the first time sheet was completed erroneously. The Claimant contends that she did not get any mail for over a week due to bad weather (C-2) and that she did not receive the notice advising of the sanction or good cause appointment (D-1) on February 24, 2010.
- 6) Mr. Spurgeon testified that the notice letter was not returned to the Department by the Post Office as he is required to document when that occurs. He further testified that the first Participant Time Sheet (D-5) appears to have been completed by the Claimant filling in participation dates according to her school schedule – Monday, Wednesday and Friday. However, it was impossible for Exhibit D-5 to be a record of January 2010 participation, as the Claimant initially indicated, because college classes did not resume at [REDACTED] until January 19, 2010. In addition, this document indicates the Claimant was sick on 2/25 (alleged to have been 1/25) but Exhibit D-6 (time sheet received February 24, 2010) indicates the Claimant was in class for 6 hours on 1/25 – this discrepancy was not explained by the Claimant.
- 7) 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.

- 8) 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.
- 9) The West Virginia Income Maintenance Manual, Chapter 13.10, sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. This policy goes on to state 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 that the Claimant was hospitalized February 3, 2010 through February 5, 2010 and while this could have been considered for good cause, the Claimant failed to appear for her good cause interview. Furthermore, I am convinced the Claimant received the February 10, 2010 notice of sanction and good cause appointment as the initial Participant Time Sheet was received two days later and there was no record of undelivered Departmental mail being returned by the Post Office. The Participant Time Sheet initially submitted (D-5) was late and erroneous, and the second time sheet is questionable due to the conflicting hours of participation and/or illness on the 25th. In the end, the Claimant failed to submit her Participant Time Sheet by the 5th and she failed to appear and establish good cause.
- 4) Based on the evidence, the Department's proposal to impose a 1st level sanction in the Claimant's WV WORKS case is affirmed.

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 ____ Day of May 2010.

**Thomas E. Arnett
State Hearing Officer**