



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

**Joe Manchin III
Governor**

**Board of Review
P.O. Box 1736
Romney, WV 26757**

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

April 20, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your West Virginia Works cash assistance due to the implementation of a third 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 West Virginia Works is based on current policy and regulations. These regulations provide that all adult members or emancipated minors in a West Virginia Works assistance group must negotiate and sign a Personal Responsibility Contract (PRC). Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC results in an imposition of a sanction against the assistance group. These sanctions are applied in the form of benefit reductions against the cash benefits. A first offense results in a one-third reduction in benefits, a second offense results in a two-thirds reduction in benefits, and a third and all other subsequent sanctions result in a ineligibility of cash assistance for three months. (West Virginia Income Maintenance Manual Chapter 1.25 and 13.9)

The information which was submitted at your hearing revealed that you failed to attend required assessment testing as outlined in your Personal Responsibility Contracts.

It is the decision of the State Hearing Officer to Uphold the action of the Department to impose a third sanction against the Claimant's WV Works cash assistance.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
-----, Family Support Specialist

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

-----,

Claimant,

v.

Action Number: 10-BOR-1097

**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 20, 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 April 19, 2010 on a timely appeal, filed April 1, 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

-----, Family Support Specialist

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in applying a third sanction against the Claimant's West Virginia Works cash assistance for her failure to participate in scheduled assessment testing as outlined in her Personal Responsibility Contract.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 1.25, 13.9, 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Letter to the Claimant from -----, FSS dated February 5, 2010
- D-2 Computer printout of RAPIDS benefit system case comments dated February 5, 2010
- D-3 Computer printout of eRAPIDS benefits system case comments dated February 9, 2010 through March 11, 2010.
- D-4 Certified Mail receipts dated March 17, 2010
- D-5 Personal Responsibility Contract, undated
- D-6 Computer printout of RAPIDS benefit system case comments dated March 18, 2010
- D-7 Computer printout of RAPIDS benefit system case comments dated March 26, 2010
- D-8 Computer printout of RAPIDS benefit system case comments dated April 1, 2010
- D-9 West Virginia Income Maintenance Manual Chapter 24.4
- D-10 Copy of previous Personal Responsibility Contract dated November 5, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant was a current recipient of West Virginia Works cash assistance, hereinafter WVW for herself and three children.
- 2) -----, Department representative testified that notification was issued to the Claimant on February 5, 2010 that she was scheduled to participate in the Test of Adult Basic Education (TABE), Emotional Health Inventory (EHI) test, and Learning needs test on February 18, 2010 (Exhibit D-1). This notification documents in pertinent part:

Everyone receiving a WV WORKS check must take certain tests to be assessed on their employability. I have scheduled you to take the emotional health inventory test, the TABE test and the learning needs test on Thursday February 18, 2010 at the [REDACTED] on [REDACTED] at 8:45 AM.

I have enclosed Personal Responsibility Contract for you to sign where indicated and return to me by 2/10/10 in enclosed envelope. Failure to show for these tests will result in a sanction (reduction in check).

Additionally, -----indicated that he left the Claimant a voice mail message for the Claimant to notify her of the correspondence and of the scheduled test (Exhibit D-2). Also the -----noted in Exhibit D-2 that he informed the Claimant to secure adequate child care for her children on the day of the assessment tests.

- 3) -----purported that inclement weather in [REDACTED] County on February 18, 2010 resulted in the cancellation of the scheduled assessment testing. -----rescheduled the assessment testing in question for March 18, 2010 and issued the Claimant, via certified mail, an additional Personal Responsibility Contract (PRC) on March 4, 2010. Exhibit D-5, Personal Responsibility Contract notes in pertinent part:

Take Emotional Health Test, Take TABE and Learning Needs Test on March 18, 2010 at [REDACTED] at 8:45 A.M.

At the bottom of the Exhibit is a copied note to the Claimant requiring that the form be signed and returned to the worker by March 12, 2010. -----notes in Exhibit D-3, Computer printout of eRAPIDS case comments that the Claimant reported to him on March 11, 2010 that she was not in receipt of the PRC and that she could pick up the documentation on March 12, 2010 at the local office. Furthermore, Exhibit D-4, Certified Mail Receipts indicate that the PRC was delivered to the Claimant on March 17, 2010.

- 4) On March 18, 2010, -----called the Claimant an hour before the scheduled testing and left a voice mail message reminding her of the scheduled testing (Exhibit D-6). On March 26, 2010, -----was informed that the Claimant did not attend the required assessment testing and applied a sanction to the cash benefits with a good cause hearing on the matter scheduled for April 1, 2010. The Claimant failed to show for the scheduled good cause hearing but phoned -----one hour after the good cause hearing was scheduled to commence (Exhibit D-8). The Claimant reported that she did not attend the scheduled assessment test as she could not secure adequate child care for her children. -----notes in Exhibit D-8, Computer printout of case comments, that he informed the Claimant in February and early March that if she could not secure child care that the Department would refer her to a child care referral agency to facilitate the Claimant's attendance at the testing.
- 5) The Claimant testified that she is unable to locate a responsible child care provider for her children and she "doesn't want to just leave them with anybody." The Claimant stated that she has no other family in the area other than her mother and her mother's living arrangement is not conducive for child care. The Claimant stated that the father of her children is not dependable and he cannot assist with child care responsibilities. The Claimant purported that she did receive -----phone call on March 18, 2010 reminding her of the scheduled testing but "her hands were tied" as she did not have anyone to watch over her children. She indicated that she has secured transportation and that if she had been allowed to take her children to the assessment testing or be provided with in-home testing she would be able to fulfill the requirement.
- 6) West Virginia Income Maintenance Manual Chapter 1.25 states:

The Personal Responsibility Contract (PRC), form DFA-PRC-1, is a negotiated contract between each of the adult or emancipated minor members of the WV WORKS AG, or non-recipient Work-Eligible Individual(s), and the Worker, as the representative of the Department.

There are 2 parts to the form and each serves a different purpose. Refusal or other failure, without good cause, to sign either part of the form results in ineligibility for the entire AG. Completion and signature of both parts of the

form are required prior to approving the WV WORKS AG. However, when the client reapplies for benefits within 3 months of the last day of the effective month of closure, no new PRC is required.

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.

7) West Virginia Income Maintenance Manual Chapter 13.9 states:

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 three 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 offense – Ineligibility for cash assistance for 3 months.

8) West Virginia Income Maintenance Manual Chapter 24.4 states:

ASSESSMENT TESTING

In assessing the client's current situation and negotiating the PRC, the Worker must explore family situations, education, work history, skills, aptitudes, attitude toward work, employment potential, possible social services or other support systems including physical, mental and emotional fitness, and the need for support service payments. Form OFA-WVW-3A may be used as an interviewing guide, but the areas explored are not limited to those on the form. Individual circumstances may require varying degrees of exploration. The Worker may include educational assessment testing. Assessment testing consists of the Learning Needs Screening, Mental Health Screening, Test of Adult Basic Education (TABE), and Work Keys. All Work-Eligible Individuals must be scheduled for assessment testing unless one of the exceptions exists under 2, a.

Exceptions to Completing TABE Testing:

- Client has completed two or more years of college, or is currently attending or is enrolled in the next scheduled term at a college or vocational/technical program which requires a high school diploma or equivalency. Under certain circumstances, however, testing may be warranted if the student has a known learning disability or his basic academic skills are deficient; or
- Client is scheduled to begin a job which will make the family financially ineligible for a monthly WV WORKS check; or
- Other documented conditions exist that prevent effective assessment. These reasons must be documented in the case recording; or
- Client completed TABE or other appropriate assessment testing at another agency, training facility, such as BEP, Workforce WV Center, ABE, or other agency within the previous two years, unless one of the conditions exists under the second and third dashes listed below for repeated assessment testing.

9) WV Works Personal Responsibility Contract PRC Client Responsibilities document in part:

I understand that I am required to attend any meetings or appointments related to my eligibility for cash assistance and my self-sufficiency goals. These meetings or appointments include, but are not limited to home visits, periodic review of my eligibility for benefits, assessment of my skills and progress in meeting my goals and becoming self-sufficient, employment interviews scheduled by or for me, etc. or **I may be sanctioned.** [emphasis added]

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that unless good cause is established, all recipients of WV Works cash assistance must adhere and cooperate with established responsibilities and goals outlined in the recipient's Personal Responsibility Contract. Requirements of the recipient include the responsibility to attend any meetings, appointments, or assessment of the individual's skills and progression towards self sufficiency. Failure to adhere to the Personal Responsibility Contract results in the imposition of a sanction against the recipient's cash assistance.
- 2) The Claimant was notified of her responsibility to attend assessment testing on multiple occasions. Additionally, the worker attempted to alleviate the Claimant's barrier of lack of child care by offering a referral to the local child care resource agency. The Claimant failed to establish adequate good cause for her failure to attend the required assessment testing.
- 3) The Claimant was not exempt from completing the required testing as outlined in policy and failed to establish adequate good cause for her failure to attend the required assessment testing therefore the Department was correct in its decision to implement a third sanction against the Claimant WV Works benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to impose a third sanction against the Claimant WV Works assistance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ day of April 2010.

Eric L. Phillips
State Hearing Officer