



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

June 14, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 20, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your WV WORKS benefits based on the application of a 3rd 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 third offense, the sanction consists of ineligibility for cash assistance for 3 months. (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 proposal to terminate your cash assistance based on the imposition of a 3rd level sanction in your WV WORKS case. The sanction will be effective July 1, 2010 through September 30, 2010.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Susan Drake, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1150

**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 May 20, 2010 on a timely appeal filed March 31, 2010. This hearing was convened via video conference technology.

It should be noted that the Claimant's WV WORKS benefits were continued pending a hearing decision.

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

Susan Drake, 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 of Health and Human Resources, hereinafter Department, was correct in its proposal to terminate the Claimant's benefits and services through the WV WORKS Program based on the imposition of a 3rd 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 West Virginia Income Maintenance Manual, Chapter 13.9
- D-2 West Virginia Income Maintenance Manual, Chapter 24.4
- D-3 West Virginia Income Maintenance Manual, Chapter 1.25
- D-4 Personal Responsibility Contract (PRC) dated October 9, 2009
- D-5 Notice advising Claimant of case staffing dated March 10, 2010
- D-6 Notice of Decision dated March 26, 2010

VII. FINDINGS OF FACT:

- 1) On or about March 26, 2010, the Claimant was notified via a Notice of Decision (D-6) that the Department was applying a 3rd sanction to her WV WORKS benefits. This notice states, in pertinent part:

Your WV WORKS /WVEAP benefits will stop. You will not receive this benefit after April 2010.

A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

This correspondence further indicates that a good cause interview has been scheduled for the Claimant on March 31, 2010.

- 2) The Department's representative, Susan Drake, submitted Exhibit D-4, the Claimant's WV WORKS – Personal Responsibility Contract (PRC), signed on October 9, 2009, wherein the Claimant agreed – “To keep all scheduled appointments with DHHR for testing, visits, placements, etc.”

- 3) The Department submitted Exhibit D-5, correspondence dated March 10, 2010, advising the Claimant of a scheduled appointment in the [REDACTED] County DHHR office on March 17, 2010. Ms. Drake testified that because the Claimant failed to appear for the March 17, 2010 scheduled appointment, she was non-compliant with the requirements of her PRC, and the sanction notice (D-6) was subsequently issued.
- 4) The Claimant testified that she has had problems with receiving her mail. She indicated that she has had a problem with some of her neighbors and also noted that the Department was sending her mail to [REDACTED] St., and it should be addressed to [REDACTED] Ave. The Claimant testified that she did not think to bring a statement in from her landlord to support her claim, however, she purported that she would not intentionally miss a scheduled appointment.
- 5) Susan Drake testified that her supervisor checked with the local Post Office when the Claimant indicated she lives at [REDACTED] Ave. (not [REDACTED] St.), and was told that because there is no [REDACTED] Street in [REDACTED] everything goes to [REDACTED] Avenue. Ms. Drake purported there was a previous sanction lifted after the Claimant moved from her mother's house due to a bad mailing address but she was not aware of any other problems with the Claimant receiving mail. In addition, the Post Office returns all Departmental mail that is undeliverable and it is documented in the individual's case. Ms. Drake testified that the Claimant's mail was not returned by the Post Office and that the Claimant has received other correspondence sent to this address.
- 6) 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.
- 7) 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.
Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.
- 8) 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.
- 9) West Virginia Income Maintenance Manual, Chapter 13.9 (C) states that the imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing decision.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that 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. A 3rd level sanction results in closure/termination of cash assistance for three months. While there are specific circumstances noted in policy for which good cause can be granted, 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. Policy goes on to note once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.
- 2) The Claimant's contention that she did not receive the March 10, 2010 correspondence is not supported by the evidence. The Claimant routinely received mail that was incorrectly addressed to Grant Street and none of the Claimant's mail has been returned by the Post Office as undeliverable. In addition, if the Claimant is having a problem with her neighbors getting into her mail, she could have provided documentation to corroborate her claim in the form of verification from her landlord or a documented report made to the Post Office. In the absence of any evidence to the contrary, it is assumed that mail is received by the intended recipient.
- 3) The Department's decision to impose a 3rd level sanction in the Claimant's WV WORKS case is therefore affirmed. The sanction will be effective July 1, 2010 through September 30, 2010.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Claimant's WV WORKS benefits based on the imposition of a 3rd level sanction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of June 2010.

**Thomas E. Arnett
State Hearing Officer**