



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

August 12, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 4, 2010. Your hearing request was based on the Department of Health and Human Resources' termination of your WV WORKS benefits.

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 (PRC), a sanction must be imposed unless the Worker determines that good cause exists (West Virginia Income Maintenance Manual, Chapter 13.9), and that a sanction notice must include a good cause appointment (West Virginia Income Maintenance Manual, Chapter 6.3.E), and that the Department must either verify a new address, receive that verification attempt as returned mail, or receive indication from the Postal Service of no new address, in considering a possible loss of contact closure (West Virginia Income Maintenance Manual, Chapter 2.1.B.2.b).

The information submitted at your hearing revealed that no good cause appointment was offered prior to possible imposition of a WV WORKS sanction due to PRC non-compliance. Additionally, it was revealed that you rectified the returned-mail issue with the Department, and possible loss of contact closure would have been incorrectly based on information regarding potential future housing. The Department could not clearly identify the closure reason, but either possible reason proposed is in error.

It is the decision of the State Hearing Officer to **reverse** the Department's termination of your WV WORKS benefits.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

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

-----,

Claimant,

v.

Action Number: 10-BOR-1259

**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 August 12, 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 June 4, 2010 on a timely appeal, filed May 3, 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 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 terminate the Claimant's WV WORKS benefits.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 2.1; 6.3; 13.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Appointment letter, dated January 28, 2010
- D-2 WV WORKS closure letter, dated February 4, 2010
- D-3 Signature page of Personal Responsibility Contract, dated November 9, 2009
- D-4 Signature page of Personal Responsibility Contract, dated July 28, 2009
- D-5 West Virginia Income Maintenance Manual, Chapter 1.25
- D-6 Rights and Responsibilities form (pages 4 and 9), dated July 28, 2009
- D-7 Pre-Hearing Conference Appointment letter, dated May 5, 2010
- D-8 West Virginia Income Maintenance Manual, Chapter 13.7
- D-9 West Virginia Income Maintenance Manual, Chapter 24.3; Chapter 24.5
- D-10 Participation hours screen print
- D-11 Case comments screen print

VII. FINDINGS OF FACT:

- 1) -----, Family Support Specialist for the Department, testified that the Department sent the Claimant – a WV WORKS recipient – an appointment letter (Exhibit D-1) on or about January 28, 2010. This letter scheduled an appointment with the Claimant on February 3, 2010. The letter states, in pertinent part:

FAILURE TO KEEP THIS APPOINTMENT WILL RESULT IN CASE CLOSURE.

----- testified that the Claimant failed to attend this appointment. The Department then notified the Claimant (Exhibit D-2) on or about February 4, 2010, that her WV WORKS benefits would be terminated. This notice states, in pertinent part:

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

REASON: You did not request benefits for the persons listed below.

Declined this benefit.

The following individuals are ineligible.

This individual did not request this benefit.

This individual did not request this benefit.

This individual did not request this benefit.

----- testified that the WV WORKS supervisor closed this case due to returned mail from the Claimant and information received that the Claimant was looking for housing out of state. She testified that the actual reason for the Claimant's WV WORKS case closure was missed appointments, and that if she had been the worker taking the action she would have closed the case by placing a third sanction. She testified that in January 2010, the Claimant was sent a 'loss of contact' letter to clarify her residence, and that the issue was apparently resolved at that time because benefits continued into February 2010. She testified that the January 28, 2010, letter would not have included a hearing request form, but that the February 4, 2010, letter would have.

- 2) The Department presented the Claimant's signed Personal Responsibility Contract (PRC) page listing assignments and activities from July 28, 2009 (Exhibit D-4) and November 9, 2009 (Exhibit D-3), and the Rights and Responsibilities form (Exhibit D-6) from July 28, 2009, including the statement regarding PRC compliance. ----- testified that the Claimant was not attending her activity – Adult Basic Education (ABE) classes – resulting in two sanctions against the Claimant's case. After the second sanction, the Department did not receive a timesheet from the Claimant documenting ABE participation, and verified that the Claimant failed to attend the classes. A third sanction was not placed on the Claimant's WV WORKS case.

- 3) The Department presented a screen print of comments made regarding the Claimant's case on February 3, 2010. These comments state, as follows:

CLIENT HAS FAILED TO KEEP ANY APOINTMENTS [sic] AND WE HAVE BEEN GETTING REQUEST [sic] FROM AND [sic] [REDACTED] THAT -----HAS APPLIED FOR A PLACE THERE. I FAILED THE CHECK AND LEFT THE STAMPS AND MEDICAID OPEN.

- 4) The West Virginia Income Maintenance Manual, Chapter 13.9, addresses WV WORKS sanctions as follows, in pertinent part:

When a member of the AG or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC, a sanction must be imposed unless the Worker determines that good cause exists.

- 5) The West Virginia Income Maintenance Manual, Chapter 6.3.E, addresses the required contents of a WV WORKS sanction letter, as follows (emphasis added):

E. DFA-WVW-NL-1

NOTE: The DFA-WVW-NL-1 must always be used with the Pre-Hearing Conference and/or a Fair Hearing request form, DFA-FH-1, and the appropriate computation forms.

The DFA-WVW-NL-1 is used **only for WV WORKS and only when the imposition of a sanction for failure to adhere to the terms of the PRC is involved.**

Instructions for completion of the ES-NL-B (See item C above) also apply to completion of the DFA-WVW-NL-1. In addition, **there is space for the Worker to schedule a Good Cause Interview. The interview must be scheduled for a date that allows the client to attend the interview and to comply with the PRC requirements before the advance notice period expires.** The good cause interview must be scheduled no less than 7 calendar days beginning with the date after the letter is requested in RAPIDS or from the date after a manual letter is sent. If the letter is hand delivered, case comments must be made indicating the date the letter was given to the client. If the good cause interview is scheduled for a date prior to the 7 days, the participant and the Worker must agree on the date.

All other policies and procedures that normally apply to the ES-NL-C apply to the use of the DFA-WVW-NL-1. See item D above.

- 6) The West Virginia Income Maintenance Manual, Chapter 2.1.B.2.b, addresses the procedures for loss of contact closures, as follows, in pertinent part:

b. Closure Due to Loss of Contact

Loss of contact occurs when the client moves and does not notify the Department. The Worker may become aware of this when a support services payment, medical card or other correspondence is returned.

The Worker must first check the address in RAPIDS. If it is incorrect due to a data entry error, the Worker must correct it and release the benefit(s) to the correct address. For SSI Medicaid recipients, the Worker must check SOLQ.

If the address is correct and/or the Postal Service indicated a new address on the returned correspondence, the Worker sends an DFA-6 to the client's new address. If the DFA-6 is returned as undeliverable, or, if the client does not report his new address by the date indicated on the form, the AG is closed, after proper notice. If the Postal Service indicates no new address on the returned correspondence, the AG is closed, after proper notice.

- 7) The West Virginia Income Maintenance Manual, Chapter 13.9.A, 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) The Department notified the Claimant that her WV WORKS benefits would be terminated due to no person in her household requesting this benefit. The Department worker clarified that the notice was incorrect. The Department worker testified that the correct reason for closure was PRC non-compliance, and speculated that the supervisor actually closed the case due to loss of contact with the Claimant. Policy establishes procedures for both possible 'correct' closure reasons. Because the actual reason for closure is ambiguous, both possibilities will be addressed.
- 2) WV WORKS policy requires case sanctions for PRC non-compliance, unless good cause is established. Because the Claimant had two prior sanctions, a third sanction would result in case closure; however, the opportunity to explain good cause must be afforded to a WV WORKS recipient. The notice requirements for a WV WORKS sanction letter include a good cause appointment. Because the Department failed to include a good cause appointment with its closure notification, a critical step in sanction imposition was skipped. Case closure for a third WV WORKS sanction against the Claimant was incorrect.
- 3) The remaining possibility is that the Claimant's WV WORKS case was closed due to loss of contact. The Department worker testified that there was returned mail from the Claimant, and that the Department received information that the Claimant applied for – but had not moved into – housing in another state. The Department worker also testified that the Claimant rectified the returned mail issue in January 2010, and that a loss of contact closure should have been – but was not – proceeded by a verification checklist notice to the Claimant to verify the new address; policy additionally confirms this requirement. If the Department intended to close the Claimant's WV WORKS benefits due to loss of contact, it did so solely on speculative information about future housing, and it did so incorrectly.
- 4) With both possible closure reasons invalid, the Department was incorrect to terminate the Claimant's WV WORKS benefits.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the action of the Department to 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 August, 2010.

Todd Thornton
State Hearing Officer