



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

September 9, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 1, 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 third-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 third-level sanction in your WV WORKS case. The sanction will be effective October 1, 2010 through December 31, 2010.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
Wanda Morgan, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1515

**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 September 1, 2010 on a timely appeal filed June 22, 2010.

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

Wanda Morgan, 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 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, 15.7, 24.3, 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Personal Responsibility Contract (PRC) dated May 7, 2010
- D-2 Notice of Decision dated June 9, 2010
- D-3 RAPIDS screen print of WV WORKS 60-Month Tracking (printed 8/16/10)
- D-4 West Virginia Income Maintenance Manual, Chapter 13.10
- D-5 West Virginia Income Maintenance Manual, Chapter 15.7
- D-6 West Virginia Income Maintenance Manual, Chapter 24.3
- D-7 Case Comments (3/2/10 – 6/23/10) and scheduling notices for assessment training (8/18/09, 6/25/09, 7/21/09 & 12/3/09)
- D-8 WV WORKS Post-Employment Services Options

Claimant's Exhibits:

- C-1 Handwritten note on RX pad from [REDACTED] D.O., dated September 1, 2010.

VII. FINDINGS OF FACT:

- 1) On or about June 9, 2010, the Claimant was notified via a Notice of Decision (D-2) that the Department was applying a 3rd sanction to her WV WORKS benefits. This notice states, in pertinent part:

A Sanction will be applied to your assistance group effective 07/10. This is the third or subsequent sanction and will continue for 3 months or until compliance.

You and your family will be ineligible for WV WORKS benefits for 3 months.

This sanction is being applied due to the failure of ----- to meet the terms of the Personal Responsibility Contract by failing to attend an assigned activity.

This notice goes on to advise the Claimant that a good cause interview was scheduled on June 22, 2010 at 10:30 a.m.

- 2) Wanda Morgan, a Family Support Specialist (FSS) employed by the West Virginia Department of Health and Human Resources, hereinafter Department, submitted Exhibit D-1 and noted that the Claimant signed her Personal Responsibility Contract (PRC) on May 7, 2010. By signing her PRC, the Claimant agreed to begin working at the [REDACTED] on May 10, 2010 (20 hours per week) until SPOKES (Strategic Planning in Occupational Knowledge for Employment and Success) classes started on June 7, 2010. The Claimant agreed to submit her time sheet verifying attendance by the 5th of the month, beginning Monday June 7, 2010.
- 3) Ms. Morgan testified that she maintains communication with placement agencies and she was advised that the Claimant did not appear at the [REDACTED] at any time in May 2010, and she failed to appear for SPOKE's classes on June 7, 2010. In addition, the Claimant failed to submit her time sheet verifying participation with her work activity. Ms. Morgan submitted Exhibit D-7 and D-8 and reported that the Claimant has demonstrated a pattern noncooperation with WV WORKS participation requirements. Ms. Morgan acknowledged that the Claimant appeared for her good cause interview but good cause was not established.
- 4) The Claimant acknowledged that she signed the PRC (D-1) and that she did not comply with the requirements contained therein because she has difficulty with childcare and poor medical health. She purported that she plans to apply for Social Security Disability but indicated she has not applied as of yet. The Claimant submitted Exhibit C-1 to further support her contention that she is too ill to comply with the work requirements necessary for WV WORKS participation.
- 5) Ms. Morgan testified that the Claimant has never provided medical verification of illness previously and noted that WV WORKS is a work participation program. Childcare was previously paid by the Department but the Claimant pulled her child out when she reportedly had a disagreement with the childcare provider. Pursuant to the West Virginia Income Maintenance Manual, Chapters 13.10, 15.7 and 24.3, a single custodial parent caring for a child under the age of one (1) is granted good cause from participation in the work requirements for a maximum of 12 months lifetime, and it ends when the child attains the age of 12 months. A single work-eligible parent with a child under the age of six (6) meets the work requirement by participating 86 hours per month or 20 hours per week. Ms. Morgan indicated that policy mandates work participation and the Claimant agreed to the condition when she signed her PRC.
- 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 in their WV WORKS case unless the worker determines that good cause exists. A third-level sanction results in closure/termination of cash assistance for three months [or until compliance]. 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.
- 2) The evidence reveals that the Claimant failed to comply with the terms and conditions of her May 7, 2010 PRC when she failed to appear at the [REDACTED] or at SPOKES Class. The Claimant attended her good cause interview on June 22, 2010, however, she did not present any documentation to support her contention that she had been too ill to comply with her PRC. The medical documentation submitted at the hearing is dated subsequent to the good cause interview and childcare arrangements made previously did not result in compliance with WV WORKS participation requirements. The evidence clearly supports the Department's proposal to impose a third-level sanction in the Claimant's WV WORKS case.
- 3) The Department's decision to impose a third-level sanction in the Claimant's WV WORKS case is therefore affirmed. The sanction will be effective October 1, 2010 through December 31, 2010.

IX. DECISION:

After reviewing the information presented at 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 third-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 September, 2010.

Thomas E. Arnett
State Hearing Officer