



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Joe Manchin III
Governor

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

October 21, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 14, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your WV WORKS cash assistance effective August 1, 2010 based on the imposition of a third (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 West Virginia 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. The client must be given the opportunity to establish good cause. For a third offense, the sanction consists of termination of the check benefit 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)

The information submitted at your hearing demonstrates that you failed to complete an agreed upon assignment; you did not submit a time sheet for the month of May 2010 by June 5, 2010 as agreed upon when you signed your PRC on April 23, 2010. However, you were not given adequate opportunity to establish good cause.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a third (3rd) level sanction in your WV WORKS case.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Maxine Pack, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1970

**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 convened on October 14, 2010 on a timely appeal filed September 8, 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
Maxine Pack, Department Representative

Presiding at the Hearing was Cheryl Henson, 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 was correct in its decision to terminate the Claimant's benefits and services through the WV WORKS Program effective August 1, 2010 based on the imposition of a 3rd level sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 13.10, 24.3 & 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Record of sanctions completed from computer system, sequence #5
- D-2 Record of sanctions completed from computer system, sequence #4
- D-3 Record of sanctions completed from computer system, sequence #1
- D-4 WV Income Maintenance Manual Section 13.9
- D-5 Personal Responsibility Contract (PRC) dated April 23, 2010
- D-6 Case Comments from computer system
- D-7 Notification letter dated July 1, 2010
- D-8 Case Comments from computer system

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving WV WORKS cash assistance when on April 23, 2010 he signed a Personal Responsibility Contract, hereinafter PRC, indicating his agreement to participate in the following assignments/activities:
 - Keep all appointments with DHHR
 - Report all life changes within 10 days
 - 30 hours weekly in college
 - Be available for home visit
 - Turn in time sheets by the 5th of the month
 - Cooperate with BCSE

He also indicated with his signature that he understood if he failed to cooperate by participating with all the assignments/activities listed that he would be penalized.

- 2) The Department contends the Claimant did not submit a May 2010 time sheet by June 5, 2010 to verify participation, and on July 1, 2010 it sent him a notification letter (D-7) which included the following pertinent information:

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

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

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.

We want to resolve this issue and determine if you had good cause for not meeting the terms of your contract.

We have scheduled a GOOD CAUSE interview for ----- on 7/7/10 at 2:00 at the office address listed above.

If this appointment is not kept, the sanction listed above WILL be applied to your benefits.

The Department allowed six (6) days between the date of the notification letter and the date of the good cause hearing.

- 3) The Claimant testified that he did not receive the notice (D-7) and therefore was unaware of the sanction or the good cause appointment, and was not given an opportunity to discuss the circumstances with his worker to determine if good cause existed. He added that he kept all appointments of which he was aware. In reviewing the notification letter (D-7) he indicated the address was correct on the notice, and offered no additional evidence to support that there was a problem with his being able to receive his mail at that address.
- 4) The Claimant testified that although his worker visited his home and completed a home visit at some point prior to the imposition of the sanction, he did not explain that the forms needed to be sent in order to avoid a sanction. He stated that he believed the forms were only necessary if he wanted to obtain mileage reimbursement.
- 5) The Department contends that the Claimant has received WV WORKS for several years and has also had previous sanctions applied to his case (D-1, D-2, D-3) which show that he has knowledge of the sanction process. The Department's representative, Maxine Pack, testified that the sanction screens in the computer system (D-1, D-2, D-3) show that there have been five (5) instances in which he has been considered to be in non-compliance; two of those instances involved situations where good cause was found and no sanction was applied. She stated this shows he had an understanding of the policy and procedures involved in the WV WORKS program regarding sanctions.

- 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 (assistance group) 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 section 13.9 states:

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.

The client must also be given the opportunity to establish Good Cause.

- 8) West Virginia Income Maintenance Manual 24.4 states:

The Worker must assist the client in all reasonable ways to achieve self-sufficiency. To accomplish this, the Worker must assess the client's knowledge and skills, work with the client and make informed recommendations about courses of action appropriate for each individual to develop a plan that is expected to lead to self-sufficiency. In addition, he must enter into an agreement with the client concerning his involvement in the process of becoming self-sufficient, monitor the client's progress to determine changing needs and the need for support service payments and take appropriate follow-up action based on the client's actions.

To meet the goals of the WV WORKS Program, a worker performs the following activities for WV WORKS families:

- Negotiates the PRC with the client to determine the best means to achieve self-sufficiency and accept personal responsibility.
- Monitors compliance with the PRC
- Determines good cause for failure to comply with the PRC
- Applies sanctions as appropriate

- 9) West Virginia Income Maintenance Manual Section 13.10 states in pertinent part:

Failure or refusal to comply, without good cause, results in imposition of a sanction. When the Worker discovers the failure or refusal, a notice of adverse action must be issued. When a letter is mailed scheduling the good cause interview, the Worker must allow no less than 7 calendar days. This period begins the day following the date the letter is requested in RAPIDS, or the day following

the date 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 appointment is scheduled for a date prior to the 7 calendar days, the participant and the Worker must agree on the appointment date.

VIII. CONCLUSIONS OF LAW:

- 1) The purpose of this hearing is to determine whether the Department, with the information available to them, correctly applied a 3rd level sanction against the Claimant effective August 1, 2010 which resulted in termination of his WV WORKS cash assistance for three months.
- 2) Policy provides that the Claimant is obligated to negotiate and sign a PRC before becoming eligible for WV WORKS cash assistance. The Claimant is then obligated to abide by the terms and conditions of the agreement in order to maintain eligibility for WV WORKS cash assistance. Failure to comply results in a sanction unless good cause is found. After the first two sanctions have been applied, subsequent sanctions require total case closure for at least three months or until compliance is achieved.
- 3) Policy also provides that the worker must allow no less than seven (7) calendar days notice for the good cause hearing. Specifically, the period begins the day following the date the letter is requested in RAPIDS. If the appointment is scheduled for a date prior to the seven (7) calendar days, the participant and the worker must agree on the appointment date.
- 4) The Claimant clearly entered into an agreement by signing the PRC in which he agreed to provide time sheets to the Department by the fifth (5th) of the month.
- 5) The evidence is clear in that the Claimant did not submit a time sheet to the Department for his May 2010 participation by June 5, 2010, which is clearly a violation of the agreement he made; however, the Department is obligated to provide him with a good cause appointment prior to applying a sanction against his case. Policy provides that the appointment must [emphasis added] be scheduled no less than seven (7) calendar days after the date of the notice, unless an agreement is made between the parties.
- 6) The evidence shows that the Department allowed only six (6) days advance notice for the good cause appointment, and that the parties did not agree to a shorter timeframe.
- 7) Although the Department was correct in its determination that the Claimant's failure to provide a time sheet as agreed was a violation of the PRC, the Claimant was not provided a good cause appointment as policy dictates prior to the imposition of a sanction. Therefore, the Department was not correct in its action to impose the 3rd level sanction against the Claimant's case.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the ruling of the State Hearings Office to **reverse** the Agency's decision to apply a third level sanction to your WV WORKS benefits effective August 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of October, 2010.

**Cheryl Henson
State Hearing Officer**