



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

December 10, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 8, 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 reveals that you had good cause for failing to comply with the requirements of your Personal Responsibility Contract (PRC).

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to terminate your cash assistance based on the imposition of a third-level sanction in your WV WORKS case.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
Melissa Steele, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-2180

**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 December 8, 2010 on a timely appeal filed October 19, 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

-----, Claimant's mother/witness

Melissa Steele, 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 was correct in its proposal to terminate the Claimant's WV WORKS cash assistance benefits due to the imposition of a third-level 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 Notice of Decision dated October 19, 2010

D-2 WV WORKS Personal Responsibility Contract (PRC) – Signed September 30, 2010

D-3 West Virginia Income Maintenance Manual, Chapter 1.25, 13.9 and 24.4

VII. FINDINGS OF FACT:

- 1) On or about October 19, 2010, the Claimant was notified (Exhibit D-1) that the Department of Health and Human Resources, hereinafter Department, was applying a third-level sanction to her WV WORKS benefits. This notice states, in pertinent part:

A Personal Responsibility Contract (PRC) sanction has been applied to your cash assistance group effective 12/10. This is the 3rd sanction applied to your cash assistance group and will continue for 3 months 12/10, 1/11, and 2/11.

- 2) The Department, represented by Melissa Steele, a Family Support Specialist employed by the Department, submitted Exhibit D-2 (Claimant's PRC signed on September 30, 2010) and noted that the Claimant was to start SPOKES class on October 12, 2010. Ms. Steele noted that the Claimant was injured in a fall a short time before October 12, 2010, and because she is pregnant, her physician signed a medical note indicating she should not participate in any activities during the period October 12, 2010 through October 15, 2010. However, because the individual who completes SPOKES orientation was not going to be present on October 18, 2010 (the next start date available), the Claimant voluntarily attended orientation on October 15, 2010.
- 3) On the morning of October 18, 2010, the Claimant phoned Ms. Steele and reported that she was unable to attend SPOKES class because her sister's car, the only means of transportation available to the Claimant, had broken down. It should be noted that the sanction notice (D-1) was sent the following day.

- 4) Melissa Steele testified that the Claimant's sister was the only means of transportation discussed with the Claimant when the PRC was developed and Susan Drake, the Claimant's current Family Support Worker, testified that public transportation is not an option where the Claimant lives.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) Chapter 13.10.E of the West Virginia Income Maintenance Manual provides "Other Good Cause Reasons" for failing to participate in an activity and states, in pertinent part:

There is no transportation currently available to the client and all possible sources of transportation have been explored. He must accept appropriate available transportation in the community.

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 third-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. Among the reasons for which good cause can be granted is if there is no transportation currently available to the client. Good cause is not a long term exemption from compliance with WV WORKS PRC requirements and should be granted only when appropriate.

- 2) The evidence reveals that the Claimant demonstrated compliance with her PRC when she voluntarily attended SPOKES orientation on October 15, 2010. The Claimant further demonstrated efforts to comply with her PRC when she phoned her worker on the morning of October 18, 2010 and advised that she was unable to attend SPOKES class because her sister's car, the only means of transportation available to the Claimant at the time, had broken down. Policy allows for the granting of good cause "if there is not transportation currently available." Because the Claimant has demonstrated willingness to comply with the requirements of her PRC, granting good cause in this case is appropriate.
- 3) The Department's decision to impose a third-level sanction in the Claimant's WV WORKS case cannot be affirmed.

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 **reverse** 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 December 2010.

Thomas E. Arnett
State Hearing Officer