



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

Earl Ray Tomblin
Governor

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

December 30, 2010

[REDACTED]

Dear [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 21, 2010. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your WV WORKS cash assistance effective December 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. When there is no transportation currently available to the client and all possible sources of transportation have been explored, good cause exists. (West Virginia Income Maintenance Manual § 13.9 and 13.10.E)

The information submitted at your hearing demonstrates that you failed to attend a class as agreed; however, you timely reported to the Department that you had no available transportation, which is considered good cause for failing to meet your agreed upon obligation to attend the class.

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
Suzanne Howard, [REDACTED] DHHR

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

Claimant,

v.

Action Number: 10-BOR-2188

**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 [REDACTED]. 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 December 21, 2010 on a timely appeal filed November 1, 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:

[REDACTED]
Suzanne Howard, 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 December 1, 2010 based on the imposition of a 3rd level sanction.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification letter dated October 27, 2010 and hearing notice
- D-2 Notification letters dated October 7, 2010 and October 26, 2010
- D-3 Personal Responsibility Contracts, Home Visit Report form
- D-4 WV Income Maintenance Manual Sections 1.25, 13.9, and 24.3
- D-5 Case Comments from Department's computer system dated October 26, 2010
- D-6 Case Comments from Department's computer system dated November 4, 2010 and December 8, 2010
- D-7 Case Comments from Department's computer system dated October 6, 2010

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving WV WORKS cash assistance when on September 23, 2010 he signed (D-3) a Personal Responsibility Contract, hereinafter PRC, indicating his agreement to participate in the following assignments/activities:
 - Keep all appointments with DHHR
 - Maintain children's health and welfare
 - Maintain 75/hrs a month in activity
 - Send in time sheets monthly by the 15th
 - Report all life changes in 10 days
 - Maintain Transportation
 - Report to SPOKES on 9/28/10 8:30 a.m. for Job Readiness/ Job Search

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

- 2) The Department contends the Claimant did not attend the SPOKES job search class as agreed, and that he only attended the class for two days; on October 5th and October 6th, as shown (D-3) on his October 2010 SPOKES participant time sheet. It also contends that this failure to attend the class regularly requires the Department to impose a sanction upon his case, and that because the Claimant has received at least two (2) prior sanctions, this sanction would require the termination of his WV WORKS cash assistance benefits.
- 3) The Claimant contends that he had good cause for failure to attend the class as agreed upon. He stated that he called the Department after his first day of class to report that he was unhappy with the class and to determine why his prior month's transportation reimbursement check had not been received yet. He explained that his car was not operational due to the water pump malfunctioning, and that he was trying to determine how he might secure funds to get it fixed.
- 4) The Claimant testified that he clearly told Ms. Howard during their phone conversation that his car was "not running". He stated that she told him to obtain an estimate for car repair and that the Department could possibly pay for the repairs. He stated that he had some difficulty obtaining the estimate because the car required towing to a repair facility prior to the estimate being obtained and most repair facilities did not want to tow the vehicle without having confirmation that the Department would pay for the repairs. He stated that he was able to provide the Department with the estimate before the end of October 2010.
- 5) The Department's representative, Suzanne Howard, is a Family Support Specialist. She stated that she remembers having a telephone conversation with the Claimant, and provided evidence of her documentation of the conversation (D-7) into the Department's computer system. The documentation was entered into the computer system on October 8, 2010, and reads as follows:

Returned client's phone call and he was not very nice. Explained he not be so nasty to his worker as we are doing the best we can. He is upset over not getting his travel money as of yet. His timesheet was not rec/d (received) until 10/6/10. The timesheet was processed on 10/6. Explained how the process works. He now states he hates SPOKES and doesn't want to do the activity.

- 6) Ms. Howard testified that although she does recall both the Claimant, during his October 8, 2010 phone conversation with her, and his wife, during a recent home visit, mentioning "car issues", she does not recall them telling her that his car was not operational. She stated that she believed that he was driving the vehicle. She added that the conversation between them was stressful and they were both upset. She stated that she explained that he needed to obtain a car repair estimate, and discussed his utilizing a bus for transportation; however, she determined it would be unreasonable to expect him to utilize the bus system because of the proximity to his home. He lived more than a mile away from the bus stop.
- 7) Evidence presented by the Department (D-5) in the form of case comments made by Ms. Howard into the Department's computer system dated October 26, 2010 reads as follows:

Placed sanction on case for not going to their assigned activity. Did the post 2nd home visit. While I was there [REDACTED] was at a job interview. He stated to me that their car was not running and that was why he could not go to his activity. Set good cause for 11/1/10 at 3 p.m.

This case comment corroborates the Claimant's testimony that he reported to Ms. Howard that his car was "not running". She used this same terminology in the above case comments. Ms. Howard testified that the Claimant told her during his good cause interview that he was getting where he needed to go, so she assumed that he was driving the car. She added that she thought he drove the car to the good cause interview; however, the Claimant testified that a relative provided transportation for him to the good cause interview. The Claimant stated that during the time his car was not operational he occasionally relied on relatives for limited transportation, but could not depend on their assistance daily or on a regular basis.

- 8) 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.

- 9) 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.

- 10) 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

11) 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.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period.

When the Worker determines that the client has good cause for failure to participate for one of the reasons listed in items A through E below; the participant must be placed in the appropriate good cause component.

E. OTHER GOOD CAUSE REASONS (NA)

The following are circumstances that may be experienced by individuals who are not temporarily exempt and not currently in an activity, or who are not meeting the minimum participation hours while in an activity, but have good cause for failing to participate:

- 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) The purpose of this hearing is to determine whether the Department correctly applied a 3rd level sanction against the Claimant effective December 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 good cause for failing to meet an obligation includes instances when the individual has no transportation currently available to him and all other possible sources of transportation have been explored.
- 4) The Claimant clearly entered into an agreement by signing the PRC in which he agreed to attend a SPOKES class regularly.
- 5) The evidence is clear in that the Claimant did not attend the SPOKES class regularly as agreed upon; however, he clearly notified the Department that his automobile was not operational at or around the time he stopped attending the class. Although there appears to have been some confusion between the parties as to the specifics of the car issues reported, the evidence is

sufficient to support that the Claimant reported his car was not operational, which establishes good cause for failing to report to his agreed upon assignment due to lack of available transportation.

- 6) The Department was not correct in its decision to apply a 3rd level sanction to this case in this instance.

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 December 1, 2010.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of December, 2010.

**Cheryl Henson
State Hearing Officer**