



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

April 7, 2010

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 20, 2010. Your hearing request was based on the Department of Health and Human Resources' reduction of your WV WORKS benefits due to a 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 Assistance Group or non-recipient Work-Eligible Individual does not comply with requirements found on her Personal Responsibility Contract, a sanction must be imposed unless the Worker determines that good cause exists (West Virginia Income Maintenance Manual, Chapter 13.9).

The information submitted at your hearing revealed that you did not comply with your Personal Responsibility Contract, and failed to establish good cause.

It is the decision of the State Hearing Officer to **uphold** the Department's reduction of your WV WORKS benefits due to a sanction.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

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

-----,

**Claimant,**

**v.**

**Action Number: 09-BOR-2194**

**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 April 7, 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 January 20, 2010 on a timely appeal, filed October 22, 2009.

**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  
Janice McCoy, Family Support Specialist  
Tim Salmons, Child 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 impose a WV WORKS sanction, reducing benefits to the Claimant.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 13.10; 24.4.D

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Case Summary
- D-2 Referral and Communications Forms (DHS-1)
- D-3 Sanction and good cause notification letter, dated August 3, 2009
- D-4 WV WORKS Grant Determination screen prints
- D-5 Personal Responsibility Contract
- D-5 West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 24.4.D

#### **VII. FINDINGS OF FACT:**

- 1) On July 7, 2009, the Department's Bureau for Child Support Enforcement (BCSE) issued a memo (Exhibit D-2) to the Claimant's WV WORKS worker, requesting a sanction due to non-cooperation with BCSE.
- 2) On or about August 3, 2009, the Department notified the Claimant (Exhibit D-3) of a WV WORKS sanction and scheduled a good cause appointment for August 13, 2009 at 10:00 AM. This notice states, in pertinent part:

This sanction is being applied due to the failure of -----to meet the terms of the Personal Responsibility Contract by FAILING TO COOPERATE W/BUREAU [*sic*] CHILD SUPPORT ENFORCEMENT.

- 3) Janice McCoy, Family Support Specialist for the Department, testified that the Claimant did not show for her scheduled good cause appointment. The sanction went into effect as of September 1, 2009.
- 4) Tim Salmons, Child Support Specialist with BCSE, testified that the Claimant failed to cooperate with BCSE in three ways: she did not remit an application for her newborn ---, she did not complete genetic testing, and she did not show for a scheduled hearing.
- 5) Mr. Salmons completed a memo (Exhibit D-2) to Ms. McCoy on September 11, 2009, providing a timeline of events in the Claimant's case. This memo documented that although the Claimant was late for a court hearing, she documented -- after the sanction

went into effect – that she appeared. It also documented that the Claimant did appear for genetic testing on August 31, 2009. This was also documented after the effective date of the sanction, on September 3, 2009. Testimony from Mr. Salmons explained that the Claimant still had not provided an application for her newborn, but that he requested removal of the WV WORKS sanction at that time based on apparent cooperation by the Claimant.

- 6) The Claimant signed a Personal Responsibility Contract (PRC), requiring that she “keep all appointments.” The document (Exhibit D-5) additionally explained that failure to cooperate or participate in required assignments or activities will result in penalties.
- 7) The Claimant testified that she switched workers at the time of the sanction. She testified that she spoke to a person in BCSE in August 2009. She testified that she appeared for the court hearing in August, but that she was late because of the weather.
- 8) The West Virginia Income Maintenance Manual, Chapter 13.9, defines sanctions as follows (emphasis added):

#### 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.

- 9) The West Virginia Income Maintenance Manual, Chapter 1.25.T, provides for the implementation of sanctions, as follows, in pertinent part:

Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in imposition of a sanction against the AG. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred. See Section 13.9 for information about sanctions.

- 10) The West Virginia Income Maintenance Manual, Chapter 13.10 discusses good cause as follows, in pertinent part:

Some reasons for granting good cause for temporarily not meeting participation requirements are life events or problems such as, but not limited to:

- The death of a spouse, parent, child, or stepchild.
- In accordance with the Family and Medical Leave Act (FMLA) of 1993, an acute, life threatening illness of a spouse, parent, or child that requires the client's immediate attention. This does not include individuals who are exempt from participation due to caring for a disabled family member as outlined in section 13.8.
- The minimum suitability standards for the specific activity are not met. See Sections 24.5 – 24.13 for minimum requirements. If none are listed for the activity, the Worker must determine if the activity placed unreasonable requirements on the client. Individuals granted good cause for this reason must be scheduled an appointment or home visit to review the situation and possible PRC update.

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. The Worker may determine that the requirement was inappropriate based upon additional assessment. An appointment to update the PRC and place the individual in another component must be scheduled as soon as possible. In addition, the Worker may determine that not applying a sanction in a particular situation provides more motivation for future participation than the imposition of a sanction. However, once a sanction has been imposed, it cannot be stopped, until the appropriate time has elapsed.

## **VIII. CONCLUSIONS OF LAW:**

- 1) Policy for the WV WORKS program requires cooperation with the PRC, unless good cause is established. The Claimant's PRC required her to keep all appointments – specifically, in this case, with BCSE – and she failed to do so. Testimony from BCSE and the Claimant revealed that the Claimant did appear for a court hearing; however, this was not documented until after the effective date of the sanction. The Claimant missed an appointment to demonstrate good cause.
- 2) The Claimant did not participate in genetic testing until August 31, 2009, and this was not documented until September 3, 2009. Had she shown for her scheduled good cause appointment on August 13, 2009, she would have not been cooperating with BCSE at that time, and, as a result, not complying with her PRC.
- 3) The Claimant did not submit an application to BCSE for her newborn child. The Department's BCSE representative testified that he could overlook this, considering that she had established her cooperation with the other BCSE issues; however, the timing of the Claimant's established cooperation with BCSE is the overriding factor for purposes of WV WORKS. By the time the Claimant either cooperated or established cooperation with BCSE, not only had she missed the appointment scheduled to provide good cause, the sanction itself had already become effective. Policy clearly states that once a sanction has been imposed, it cannot be stopped. The Department was correct to impose a WV WORKS sanction due to the Claimant's non-compliance with her PRC, despite subsequent compliance.

## **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Department to apply a sanction reducing 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 April, 2010.**

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**Todd Thornton**  
**State Hearing Officer**