



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

February 8, 2010

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' decision to terminate your benefits under the West Virginia WORKS Program based on the application of a 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 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 decision to terminate your cash assistance based on a 3rd level sanction in your WV WORKS case for the period December 1, 2009 through February 28, 2010.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
Angie Diaz, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 09-BOR-2303

**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 February 8, 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 hearing was convened on January 20, 2010 on a timely appeal filed December 2, 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
Angie Diaz, 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 or not the 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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- | | |
|-----------|---|
| Exhibit-1 | West Virginia Income Maintenance Manual, Chapter 13.9 |
| Exhibit-2 | Detailed doctor's statement dated November 2009 |
| Exhibit-3 | Request for Detailed doctors statement |
| Exhibit-4 | West Virginia Income Maintenance Manual 13.10,D |
| Exhibit-5 | Notice of Decision (Sanction Notice EDCI) dated November 17, 2009 |
| Exhibit-6 | Case Comments (CMCC) dated November 30, 2009 |
| Exhibit-7 | Request Faxed to doctor for Detailed Doctor Statement |
| Exhibit-8 | Detailed Doctor Statement from [REDACTED] received December 1, 2009 |

VII. FINDINGS OF FACT:

- 1) Angie Diaz, a Family Support Specialist (FSS) employed by the Department of Health and Human Resources, hereinafter Department, testified that the Claimant has been exempt from participation in a WV WORKS work activity due to a stated disability (Exhibit-3). Pursuant to policy found in the West Virginia Income Maintenance Manual §13.10,D, the Claimant's condition must be reevaluated at least quarterly.
- 2) Ms. Diaz notified the Claimant in correspondence dated November 4, 2009 (Exhibit-2) that she needed to have the enclosed detailed doctor's statement completed and returned to the Department by November 13, 2009.
- 3) On or about November 17, 2009, the Claimant was notified via a Notice of Decision (Exhibit-5) that the Department was applying a 3rd sanction to her WV WORKS benefits. This notice states, in pertinent part:

Your WV WORKS /WVEAP benefits will stop. You will not receive this benefit after November 2009.

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

This correspondence further indicates that a good cause interview has been scheduled for the Claimant on November 30, 2009.

- 4) The Claimant phoned Ms. Diaz on November 25, 2009 inquiring why she was being placed in a sanction and the Claimant acknowledged that she had not been to the doctor to get the form completed. The Claimant testified during the hearing that she has memory problems and that she forgot the document needed to be completed.
- 5) The Claimant attended the Good Cause appointment on November 30, 2009 at 8:30 a.m. and reported that she was unable to get the doctor's statement completed as her doctor moved his practice and it would take three (3) months to schedule an appointment. Because the Claimant had been receiving counseling services, Ms. Diaz suggested the form be completed by her doctor at [REDACTED]. An agreement was reached at the Good Cause appointment wherein the Claimant had to have the doctor's statement completed and returned to Ms. Diaz before 5:00 p.m. on November 30, 2009 so that necessary coding could be placed in the RAPIDS computer system to lift the sanction. However, if the document was not returned by the agreed time, the sanction would not be lifted.
- 6) Subsequent to the Good Cause meeting, the Claimant phoned Ms. Diaz and requested the doctor's statement be faxed to [REDACTED] at [REDACTED]. Ms. Diaz submitted Exhibit-7 to show that she complied with the Claimant's request, however, Exhibit-8 clearly shows that the completed doctor's statement was not returned via fax until December 1, 2009.
- 7) The West Virginia Income Maintenance Manual, Chapter 13.10, D addresses physical and mental incapacity and states that an individual is experiencing a physical or mental health condition or he is suffering from a temporary debilitating injury for which a reasonable accommodation cannot be made. The individual's condition must be reevaluated within the time limits specified by his medical practitioner or at least quarterly.
- 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 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, 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.
- 10) 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.

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 3rd level sanction results in closure/termination of cash assistance for 3 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. The worker has considerable discretion in imposing a sanction. Policy goes on to note once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.
- 2) The undisputed evidence indicates the Claimant failed to provide a detailed doctor's statement by the original deadline of November 13, 2009 and was subsequently notified that a 3rd sanction was being imposed in her case. The Claimant was provided two additional opportunities to supply the requested documentation - during her Good Cause appointment at 8:30 a.m. on November 30, 2009 and before the close of business (5:00 p.m.) on that same day. The Department has demonstrated considerable patience and the willingness to assist the Claimant, however, when the information requested was not received by the 5:00 p.m. deadline on November 30, 2009, the sanction was appropriately imposed. While it was noted that the requested documentation was received on December 1, 2009, once the sanction was imposed, it could not be removed by the worker until the appropriate time had elapsed.
- 3) The Department's decision to impose a 3rd level sanction in the Claimant's WV WORKS case is therefore affirmed. The sanction will remain in place during the period December 1, 2009 through February 28, 2010.

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 **uphold** the Department's decision to terminate the Claimant's WV WORKS benefits based on the imposition of a 3rd level sanction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 8th Day of February 2010.

Thomas E. Arnett
State Hearing Officer