



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**Office of Inspector General**

**Board of Review**  
P.O. Box 1736  
Romney, WV 26757

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

**Earl Ray Tomblin**  
Governor

May 24, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 22, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your WV WORKS cash assistance by imposing a second-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 second offense, the sanction consists of a two-thirds reduction in cash assistance for a period of three months. (West Virginia Income Maintenance Manual Chapter 13.9)

The information which was submitted at your hearing revealed that you did not present good cause for your failure to comply with the requirements of your Personal Responsibility Contract.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to impose a second-level sanction against your WV WORKS cash assistance and reduce your benefits for three months.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review  
Larry Fisher, Family Support Specialist

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1041**

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened May 22, 2012, from a timely appeal, filed March 28, 2012.

It should be noted that the Claimant's benefits under the WV WORKS cash assistance program continue at the previous level of determination pending a decision from the State Hearing Officer.

**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  
Larry Fisher, Family Support Specialist-WVDHHR

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its decision to sanction and reduce the Claimant's WV WORKS cash assistance.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Chapter 1.25, 13.9, 13.10

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

**Department's Exhibits:**

- D-1 Notice of Scheduled Hearing dated April 16, 2012
- D-2 Hearing Request dated March 28, 2012
- D-3 Hearing Summary
- D-4 Personal Responsibility Contract dated December 12, 2011
- D-5 Personal Responsibility Contract dated May 10, 2009
- D-6 Notice of Home Interview dated February 13, 2012
- D-7 Notice of Appointment dated February 13, 2012
- D-8 Notice of Decision dated March 19, 2012

**Claimant's Exhibits:**

- C-1 Physician Statement dated May 13, 2012

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of WV WORKS cash assistance and has received one prior sanction for failing to adhere to the requirements of the program.
- 2) The Claimant completed and signed a Personal Responsibility Contract (PRC) (Exhibit D-4) on December 12, 2011. By signing this document, the Claimant agreed to specific assignments and activities with regards to her participation in the WV WORKS program. These assignments include keeping all scheduled appointments and submitting time sheets by the fifth day of each month in order to verify her participation in her assigned activity.
- 3) The Claimant was required to provide a time sheet by February 5, 2012, to verify her January 2012, participation in her assigned activity. The Claimant failed to submit the required time sheet and a second-level sanction was proposed against the Claimant's WV WORKS assistance.

- 4) Larry Fisher, Family Support Specialist, scheduled a home visit (Exhibit D-6) with the Claimant for February 27, 2012. The Claimant submitted the required time sheets and Mr. Fisher agreed to remove the second sanction, but scheduled the Claimant for a re-orientation to the program (Exhibit D-7) for March 15, 2012.
- 5) Mr. Fisher testified that the Claimant failed to attend the re-orientation and a sanction was imposed against the Claimant's WV WORKS assistance for failing to keep all scheduled appointments.
- 6) On March 19, 2012, a Notice of Decision (Exhibit D-8) was issued to the Claimant informing her that a second sanction would be imposed effective April 2012 and her WV WORKS assistance would be reduced by two-thirds for three months. The notice documents that a good cause appointment was scheduled for March 27, 2012. Mr. Fisher indicated that the Claimant attended the good cause appointment, however, good cause was not granted for the Claimant's failure to attend the re-orientation.
- 7) The Claimant indicated that she attempts to keep all of her scheduled appointments, but acknowledged that she missed the scheduled re-orientation because her daughter had surgery on May 13, 2012 (Exhibit C-1) for the removal of her tonsils and adenoids. When questioned as to how a surgery scheduled for May 2012, pertained to a scheduled appointment for March 2012, the Claimant replied, "they must have gotten the date mixed up because she turned in a time sheet [excusing her for participation due to the surgery]."
- 8) West Virginia Income Maintenance Manual § 1.25 documents, in pertinent part:

The Personal Responsibility Contract (PRC) is a contract between each of the adult or emancipated minor members of the WV WORKS AG, or non-recipient Work-Eligible Individual(s), and the Worker, as the representative of the Department. Completion and signature of the PRC form is required prior to approving the WV WORKS AG.

Failure, without good cause, to adhere to the responsibilities or any task listed on the PRC after signature, results in imposition of a sanction against the AG.

- 9) West Virginia Income Maintenance Manual §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.

1<sup>st</sup> Offense - 1/3 reduction in the check amount for 3 months.

2<sup>nd</sup> Offense - 2/3 reduction in the check amount for 3 months.

3<sup>rd</sup> Offense and all subsequent offenses - Ineligibility for cash assistance for 3 months.

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

10) West Virginia Income Maintenance Manual §13.10 states, in pertinent part:

All mandatory Work-Eligible Individuals must be placed into a relevant and a current component for tracking and monitoring purposes on approval date. The participant must remain in that component whether or not they are working, cooperating, or sanctioned until either the case is closed or the Case Manager and participant agree to change the component. Not meeting participation requirements or being sanctioned are not reasons to disenroll the participant from their assigned component(s). 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.

- The parent, an included non-parent caretaker, or a non-recipient Work-Eligible Individual quits employment or fails to participate in his assigned activity due to enrollment and full-time attendance in school, training, or an institution of higher learning. The PRC must be updated and these individuals should be placed in the VT, AB, or CL components as soon as possible.

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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. See Section 6.3, Items D and E, A Worker generated letter from RAPIDS or a manual letter, DFA-WVW-NL-1 is used.

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.

Clients in any of these components are still considered in the federal participation rate calculation.

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#### 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:

- The 12-week postpartum period following the birth of any additional child after having used the 12 month lifetime Age of Child (TF) period. Anytime other than the usual 12-week period requires medical documentation of the expected return to work date.
- The 12-week period following the placement of a child with the individual for adoption or foster care.

A verified activity will start within 30 days and there is no other activity available in the interim

- The individual is required to appear in court or for jury duty.
- A requirement of the Division of Children and Adult Services precludes participation for a specified period of time.

- The individual refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.
- The individual would be required to travel more than 1 hour round trip to participate, unless it can be shown that local community travel standards exceed the 1 hour limitation.
- 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 stipulates that 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. A penalty for a second-level sanction results in a two-thirds reduction of WV WORKS cash assistance for a three-month period. Policy lists specific circumstances in which the recipient may be granted good cause for the infraction and the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his or her ability, understands the requirements, and the sanction process. Policy notes that the worker has considerable discretion when imposing the sanction.
- 2) The evidence in this case clearly demonstrates that the Claimant failed to comply with the provisions outlined in her PRC. During the hearing process, the Claimant indicated that she was unable to attend the scheduled appointment for March 2012, due to her daughter's May 2012, surgery. This scheduled surgery was completed two months after the imposed sanction and is not relevant to the matter at hand, therefore, the Claimant failed to present good cause for her non-compliance with her PRC and the Department's decision to impose a second-level sanction is affirmed.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to implement a second-level sanction against the Claimant's WV WORKS cash assistance.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of May, 2012.**

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**Eric L. Phillips  
State Hearing Officer**