



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

Rocco S. Fucillo  
Cabinet Secretary

August 3, 2012

Legal Aid of WV

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Attn: -----, Esq.

**Re: -----**

**Case No.: 12-BOR-1356**

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your client's hearing held August 1, 2012. Your client's hearing request was based on the action of the Department of Health and Human Resources to terminate her 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 the hearing fails to demonstrate that your client was non-compliant with the requirements of her Personal Responsibility Contract (PRC).

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

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review  
Heather Stanley, FSS, DHHR

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

-----,

**Claimant,**

v.

**Action Number: 12-BOR-1356**

**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 August 1, 2012, on a timely appeal filed May 30, 2012.

**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 (participated telephonically)  
-----, Esq., Counsel for the Claimant (participated telephonically)  
Heather Stanley, Family Support Specialist, WVDHHR  
Valerie Wells, Family Support Supervisor, 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 of Health and Human Resources was correct in its action to terminate the Claimant's WV WORKS cash assistance benefits based on the imposition of a third-level sanction.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 1.25 and 13.9

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

**Department's Exhibits:**

- D-1 Summary of participation with SPOKES
- D-2 Correspondence from -----, -----, Inc., dated July 30, 2012
- D-3 Notice of Decision dated May 25, 2012
- D-4 West Virginia Income Maintenance Manual, Chapters 13.9 and 1.25

**VII. FINDINGS OF FACT:**

- 1) On or about May 25, 2012, the Claimant was notified via a Notice of Decision (Exhibit D-3) 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:

Your WV WORKS/WVEAP benefits will stop. You will not receive this benefit after June 2012.

A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC) and/or the Self Sufficiency Plan (SSP).

- 2) The Department, represented by Heather Stanley, a Family Support Specialist, submitted Exhibit D-1 to show that the Claimant had successfully complete SPOKES class and was prepared to pursue employment. Ms. Stanley testified that she referred the Claimant to the Work Now Program and her resume was forwarded to -----, Inc. Ms. Stanley purported that she was contacted by the Work Now Program representative, -----, and advised the Claimant refused to interview for employment opportunities at -----, Inc.
- 3) Ms. Stanley submitted Exhibit D-2, correspondence from ----- of -----, Inc., dated July 30, 2012, which states:

As requested in your letter below is the following information on -----:

During the week of May 21<sup>st</sup> and continuing into the week of May 28<sup>th</sup> I began calling individual for an interview for my Summer Food program and for the front desk. I was given resumes from ----- from the Work Now Program. I called ----- and she informed me she was not interested. I called ----- to let her know. I continued to call the remaining applicants. ----- did call back to inform me she now wanted to be considered for the positions. At that time I had some applicants hired and my remaining interview slots were filled.

- 4) The Claimant presented testimony to indicate she was told the job required her to have a high school diploma or a GED. The Claimant further testified, as documented in Exhibit D-2, that she called -----, Inc. back to advise she wanted to be considered for the available positions. While the Department contended that the Claimant called -----, Inc. back several days later, there is no documentation to verify when the Claimant contacted -----, Inc. to advise she would like to be considered for the open positions.
- 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.  
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.  
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. 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 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. The worker has considerable discretion in imposing a sanction.

- 2) The Department's case fails to provide sufficient evidence to demonstrate the Claimant was not complying, or not attempting to comply to the best of her ability, with the requirements of her PRC. The Department did not submit a copy of the Claimant's current PRC and the Claimant provided convincing testimony to indicate that while she initially thought she was not qualified for the position with -----, Inc., she called the potential employer back and requested to be considered for the open positions. Without a copy of the Claimant's current PRC and verification identifying when the Claimant called -----, Inc. back to express interest in the positions, there is insufficient evidence to indicate the Claimant was not compliant with the requirements of her PRC.
- 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 August 2012.**

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**Thomas E. Arnett  
State Hearing Officer**