



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

August 28, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 16, 2012. Your hearing request was based on the Department of Health and Human Resources' decision 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 presented good cause for your failure to appear at your scheduled home visit.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to impose a second-level sanction against your WV WORKS cash assistance.

Sincerely,

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

cc: Erika Young-Chairman, Board of Review
Brittany Scarlett-Family Support Supervisor

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1537

**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 hearing was convened on August 16, 2012, on a timely appeal, filed June 15, 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
Sarah Megargee, Department representative

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 13.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Notice of Appointment dated May 31, 2012
- D-3 Notice of Decision dated June 12, 2012
- D-4 Hearing Request
- D-5 Computer printout of case comments

Claimants' Exhibits:

- C-1 Notice of Decision dated May 31, 2012
- C-2 Treatment Proposal from -----
- C-3 Notice of Approval (Non-Emergency Medical Transportation Benefits) dated July 10, 2012
- C-4 Participant Time Sheet for June 2012

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient and participant with the Department's WV WORKS cash assistance program (WV WORKS).
- 2) On May 31, 2012, the Department issued notice (Exhibit D-2) to the Claimant scheduling a home visit with James "Cory" Beahm, Family Support Specialist (FSS Beahm), for June 7, 2012, at 10:30 A.M. This notice was issued to the Claimant's mailing address of ----- West Virginia (Claimant's mother's address). As a matter of record, the Claimant's physical address is ----- West Virginia.
- 3) Testimony revealed that FSS Beahm attempted the home visit; however, the Claimant was not present in the home at the scheduled time. Based on the Claimant's absence, FSS Beahm imposed a second-level sanction to the Claimant's WV WORKS.
- 4) On June 12, 2012, FSS Beahm issued notice (Exhibit D-3) to the Claimant informing her of the imposed sanction, effective July 2012, which resulted in two-thirds reduction of WV WORKS for three months. This notice afforded the Claimant a good cause appointment for June 19,

2012, at 12:00 P.M. as an opportunity to present good cause for failing to keep her appointment at the scheduled home visit.

- 5) On June 14, 2012, the Claimant and FSS Beahm completed the good cause appointment telephonically. During the good cause appointment, the Claimant informed FSS Beahm that she did not receive notice of scheduled home visit (Exhibit D-2); however, FSS Beahm confirmed the Claimant's mailing address as the correct address and did not grant good cause (Exhibit D-5).
- 6) The Claimant contended that she did not receive notice of the scheduled home visit; however, she indicated that on the date of the scheduled visit she was with her son in -----, West Virginia, for a scheduled emergency dental procedure (Exhibit C-2). The Claimant purported that her child's Medicaid assistance would not provide payment for a dental partial for her son and she sought help with FSS Beahm on June 14, 2012, for assistance with payment of the procedure. The Claimant stated that she informed FSS Beahm of her son's procedure, but was informed that good cause for the imposed sanction would not be granted. The Claimant provided notice (Exhibit C-3) that the Department provided payment for Non-Emergency Medical Payment for the Claimant's trip to ----- on June 7, 2012, and that she was absent from her participation (Exhibit C-4) in her job readiness course with the WV WORKS program.

The Claimant indicated that her sister-in-law was present in her home on June 7, 2012, and FSS Beahm failed to appear. On June 27, 2012, the Claimant completed her home visit with FSS Beahm (Exhibit D-5). The Claimant further questioned FSS Beahm's appearance at her home on June 7, 2012, because he could not locate her home on June 27, 2012, and inquired with her mother for directions to her home on that date.

- 7) 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.

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.

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

- 8) West Virginia Income Maintenance Manual § 13.10 documents in pertinent part:

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.

- 9) 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates that when a member of the benefit group does not comply with the requirements found on his or her 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 notes that the worker has considerable discretion when imposing the sanction.
- 2) Evidence is clear that the Claimant failed to appear for a scheduled home visit on June 7, 2012; however, the Department is obligated to provide the Claimant an opportunity to present good cause for her failure to adhere to the responsibilities of her PRC. The facts of this case reveal that the Claimant provided a reasonable explanation as to why she failed to appear at her scheduled home visit. The Claimant's son's out-of-town emergency dental appointment is considered to be good cause and the imposed sanction is found to be unreasonable. Therefore, the Department's decision to impose a second sanction is not warranted.

IX. DECISION:

It is the decision of the State Hearing Officer to reverse 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 August 2012.

Eric L. Phillips
State Hearing Officer