



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

August 29, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 14, 2012. Your hearing request was based on the Department of Health and Human Resources' termination of 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 WV WORKS assistance group (AG) does not comply with the requirements found on his Personal Responsibility Contract (PRC) or Self-Sufficiency Plan (SSP), a sanction must be imposed unless there is good cause, and that sanctions are applied in the form of termination of benefits for third or subsequent offenses. (West Virginia Income Maintenance Manual, Chapter 13.9)

The information submitted at your hearing revealed that you failed to comply with a PRC requirement, did not establish good cause, and that there have been at least three previous offenses.

It is the decision of the State Hearing Officer to **uphold** the Department's termination 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
Greg McDowell, Department Representative

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1557

**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 August 29, 2012, 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 on August 14, 2012, on a timely appeal, filed June 22, 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
Greg McDowell, Department representative

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 terminate the WV WORKS benefits of the Claimant.

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 Participant Time Sheet forms
- D-3 Appointment letter
- D-4 Personal Responsibility Contract (PRC) and Self-Sufficiency Plan (SSP)
- D-5 Notice of WV WORKS termination, dated June 14, 2012
- D-6 West Virginia Income Maintenance Manual, Chapter 13.9

VII. FINDINGS OF FACT:

- 1) Greg McDowell, a Family Support Specialist for the West Virginia Department of Health and Human Resources (Department), testified that the Department notified the Claimant (Exhibit D-5) on or about June 14, 2012, that his WV WORKS benefits would be terminated. This notice states, in pertinent part:

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

REASON: 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) Mr. McDowell testified that the Claimant reapplied for WV WORKS in March 2012 after a previous third sanction ended. He testified that the Claimant was initially given an assignment to attend classes at ----- Community and Technical College (-----), but when these classes were insufficient to meet the Claimant's required hours of participation an updated PRC (Exhibit D-4) was completed to include additional hours attending the EXCEL program. This PRC, updated and signed by the Claimant on May 29, 2012, lists as an assignment or activity that the Claimant's participation hours are to "...come from ----- and EXCEL program."

- 3) Mr. McDowell testified that the Department receives regular communication regarding individual attendance for the EXCEL program, and that the Claimant was not attending classes. He testified that the Claimant was to start the EXCEL classes on June 4, 2012, but did not. He testified that the Claimant called on June 6, 2012, to report that he had not been attending classes due to the illness of his child, but that he would return to classes on June 7, 2012. He testified that he sanctioned the Claimant for failure to attend his required activity on June 13, 2012, after the Claimant failed to attend EXCEL classes.
- 4) The Claimant testified that he did not attend EXCEL classes, but did attend his classes at -----. The Claimant testified that he called to advise Mr. McDowell that he could not attend these classes, and that Mr. McDowell did not return his calls, but that he did not come into the office to speak to Mr. McDowell after his calls went unreturned. The Claimant testified that he was unable to attend EXCEL classes due to his inability to sit or stand for long periods of time for medical reasons. The Claimant did not document these medical reasons in the hearing, nor did he explain why he did not discuss these medical reasons with Mr. McDowell in the negotiation of his initial or amended PRCs.
- 5) The West Virginia Income Maintenance Manual, at Chapter 13.9, states that “When a member of the AG or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC or SSP, a sanction must be imposed unless the Worker determines that good cause exists.”
- 6) The West Virginia Income Maintenance Manual, at Chapter 13.9.A, explains the implementation of sanctions, stating that “Sanctions are applied in the form of benefit reductions and, for the 3rd or subsequent offense, termination of benefits.”

VIII. CONCLUSIONS OF LAW:

- 1) Policy for the WV WORKS program requires an individual to comply with PRC or SSP requirements, and requires sanctions when non-compliance is without good cause. The Claimant did not attend an activity required by his PRC. The Claimant communicated a reason to the Department worker for his initial non-compliance, but failed to continue to communicate reasons or excuses for subsequent non-compliance. The Claimant failed to comply with his PRC and did not have good cause for non-compliance.

- 2) There was no dispute that the Claimant had previously received a sanction for a third-level offense, and sanctions for third or subsequent offenses requires a termination of WV WORKS benefits. The Department was correct to terminate the Claimant's WV WORKS benefits due to a sanction for a third or subsequent instance of PRC non-compliance.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate 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 August, 2012.

**Todd Thornton
State Hearing Officer**