



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

September 17, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 6, 2012. Your hearing request was based on the Department of Health and Human Resources' reduction of your WV WORKS benefits due to the imposition of a second 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. These regulations state that failure, without good cause, to adhere to the requirements found on the Personal Responsibility Contract will result in the imposition of a sanction. For the first offense, the benefit amount is reduce by one-third, for the second offense by two-thirds and for third and subsequent sanctions the benefit amount is terminated (WV Income Maintenance Manual § 13.9 A).

The information submitted at your hearing failed to establish good cause for your failure to participate in the work activity as found on the Personal Responsibility Contract.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to reduce your WV WORKS benefits as result of a second sanction.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Beverly Ballengee, Family Support Supervisor

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1731

**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 September 6, 2012, for -----, held by videoconference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed July 13, 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.

III. PARTICIPANTS:

-----, Claimant

-----, Witness for Claimant

Jerry Hall, Family Support Specialist

Presiding at the Hearing was Kristi Logan, 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's imposition of a second sanction against Claimant's WV WORKS benefits was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 13.9 A and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Scheduling Order
- D-2 Hearing Request received July 13, 2012
- D-3 Hearing/Grievance Request Notification
- D-4 Notification Letter dated June 14, 2012
- D-5 WV Income Maintenance Manual § 13.9
- D-6 Department's Summary
- D-7 Self-Sufficiency Plan of the Personal Responsibility Contract updated on July 13, 2012

VII. FINDINGS OF FACT:

- 1) Claimant was a recipient of WV WORKS benefits and had an assessment on June 1, 2012. Claimant was placed in SPOKES classes and was scheduled to begin June 11, 2012 (D-7).
- 2) Jerry Hall, Claimant's caseworker, testified that she was notified by the SPOKES instructor that Claimant did not attend class on June 11, 2012. The instructor reportedly called Claimant to inquire about her absence and was told by Claimant that she could not attend class on June 11th as it was her son's birthday, and she was having a party for him.
- 3) On June 13, 2012, Ms. Hall proposed a second WV WORKS sanction, as Claimant had yet to start attending SPOKES classes. A notification letter was issued that date by the Department informing Claimant of the proposed sanction and notifying her of a good cause appointment scheduled for June 19, 2012 (D-4).
- 4) Ms. Hall stated she received a voice mail message from Claimant's mother, -----, on July 18, 2012, after office hours, advising that -----' car had broken down and she would be unable to take Claimant to SPOKES class.

- 5) The sanction was imposed on July 19, 2012, when Claimant did not show for her good cause appointment, reducing her WV WORKS benefits by 2/3. Ms. Hall stated she had not spoken with Claimant during this time, only her mother with whom she had no authority to discuss Claimant's case with.
- 6) -----, Claimant's mother, testified that she is Claimant's guardian due to her mental health issues. ----- stated she was present when Claimant was assigned to attend SPOKES classes and encouraged her daughter to attend, despite the fact that she was to start on her son's birthday. ----- stated Claimant's physician did not feel Claimant should attend SPOKES classes and advised her to apply for Supplemental Security Income (SSI).
- stated she is Claimant's only means of transportation and her car was vandalized on June 10, 2012. ----- stated she has called and left messages with the Department numerous times without speaking to anyone. Her car was not repaired until July 3, 2012 and she had no way of getting Claimant to the office to explain the situation.
- 7) Ms. Hall testified that she was unaware of -----' guardianship over Claimant and had never received any documentation to that effect. She had no record of Claimant or ----- contacting her prior to June 18, 2012, or physician's statement exempting her from work activities. Ms. Hall added Claimant applied for Low Income Energy Assistance Program (LIEAP) on her own and had no reason to believe Claimant did not handle her own affairs. Claimant has since provided a doctor's excuse exempting her from future work requirements.
- 8) WV Income Maintenance Manual § 13.9 A states:

When a member of the AG [assistance group] or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC [personal responsibility contract] or SSP [self-sufficiency plan], a sanction must be imposed unless the Worker determines that good cause exists.

Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.

Sanctions are applied in the form of benefit reductions and, for the 3rd or subsequent offense, termination of benefits. The amount of the benefit reduction is a fixed amount and is determined as follows:

1st offense: 1/3 reduction in benefit amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months

2nd offense: 2/3 reduction in benefit amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months.

3rd and all subsequent offenses: Ineligibility for cash assistance for 3 months

- 9) WV Income Maintenance Manual § 13.10 states 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 SSP 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that when an individual fails to comply with the requirements of the Personal Responsibility Contract, a penalty is imposed unless good cause exists.
- 2) Claimant failed to establish good cause for not adhering to her work activity of attending SPOKES classes, as found on the Personal Responsibility Contract. Claimant also failed to notify the Department of her mother's guardianship over her, which would have allowed her mother to act on her behalf.
- 3) The Department correctly imposed a second sanction on Claimant's WV WORKS benefits for failure, without good cause, to participate in an assigned work activity.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to reduce Claimant's WV WORKS benefits by imposing a second sanction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th day of September 2012.

**Kristi Logan
State Hearing Officer**