



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 E. Third Avenue
Williamson, WV 25661

Earl Ray Tomblin
Governor

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

March 2, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 3, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to establish a third sanction which would terminate your WV WORKS benefits.

In arriving at a decision, the State Hearings 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 provide that every parent or other caretaker included in a WV WORKS payment has a responsibility to participate in an activity to help prepare for, obtain and maintain gainful employment. (West Virginia Income Maintenance Manual §24.1)

The information submitted at this hearing revealed that in October 2011, you were sanctioned from the WV WORKS Program because you did not perform the work activity agreed upon when you completed your Personal Responsibility Contract (PRC).

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to impose a sanction against your WV WORKS benefits. Your sanction will begin in April, 2012.

Sincerely,

Stephen M. Baisden
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Teresa Bruder, WV DHHR, [REDACTED] County Office

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

-----,

Claimant,

v.

ACTION NO.: 11-BOR-2527

**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 March 2, 2012 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 Fair Hearing was convened via videoconference, with Claimant and Department's Representative appearing at the [REDACTED] County office of the WV DHHR in [REDACTED] WV, and the Hearing Officer appearing at the [REDACTED] County office of the WV DHHR in [REDACTED] WV, on February 3, 2012, on a timely appeal filed December 5, 2011.

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

Teresa Bruder, Family Support Specialist, Department's Representative

Presiding at the Hearing was Stephen M. Baisden, State Hearing Officer and member of the Board of Review.

Both participants were placed under oath at the beginning of the hearing.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its proposal to impose a third sanction against Claimant's WV WORKS benefit.

V. APPLICABLE POLICY:

WV Income Maintenance Manual §1.25, §13.10 and §24.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Income Maintenance Manual Chapter 1, section 25, Chapter 13, section 10 and Chapter 24, section 3
- D-2 Letter from Department to Claimant dated November 2, 2011
- D-3 Personal Responsibility Contract (PRC), signed and dated by Claimant and Family Support Specialist on July 7, 2011
- D-4 Referral to EXCEL Program, dated July 7, 2011
- D-5 EXCEL Program Weekly Participant Progress Reports for October, 2011 and WV WORKS Participation Time Sheet for October, 2011
- D-6 [REDACTED] Hospital Work Release Form, dated November 15, 2011
- D-7 [REDACTED] Health Center Patient Progress Notes, faxed to the Department on January 5, 2012

Claimant's Exhibits:

- C-1 Written statement from Claimant's neighbor [REDACTED] dated February 2, 2012
- C-2 Written statement from Claimant's neighbor [REDACTED] dated February 2, 2012
- C-3 Written statement from Claimant's neighbor [REDACTED] dated February 2, 2012
- C-4 Written statement from Claimant's neighbor [REDACTED] not dated

VII. FINDINGS OF FACT:

- 1) In November, 2011, the WV WORKS unit of the WV DHHR in [REDACTED] WV, imposed a third sanction against Claimant's WV WORKS benefit due to his alleged failure to participate in a work activity. This sanction terminated Claimant's participation in the

WV WORKS program for a minimum of three months. Claimant requested a Fair Hearing on December 5, 2011, in order to protest the imposition of this sanction.

- 2) On July 7, 2011, Claimant signed a Personal Responsibility Contract (PRC.) (Exhibit D-3.) Part 1 of the PRC is a list of WV WORKS participant responsibilities. This document reads in part:

I understand that upon receipt of cash assistance, I am required to participate in a work activity.

I understand that I must develop a Self-Sufficiency Plan as part of my PRC. The final goal of my plan will be to become self-supporting . . . I must follow my plan or I may be sanctioned . . . I further understand that my Self Sufficiency Plan will be developed based on my own life situations and my plan may be changed as needed to help me meet my goal of getting a job.

I understand that if I am a parent age 20 or above, I will have to get a job or be in a job activity, or both. I further understand that if I quit or refuse a job or job activity without good cause, I will be sanctioned.

I understand that I must comply with the Rights and Responsibilities section of my application for assistance and follow my PRC or a penalty may be applied. Penalties include case closure, repayment or legal action, removal from the payment, or sanctions as follows:

- First sanction – A one-third cut in my family’s WV WORKS benefit for three months for my first penalty;
- Second sanction – A two-thirds cut in my family’s WV WORKS benefit for three months for my second penalty;
- Third and all subsequent sanctions – My family’s WV WORKS benefit will stop for at least three months if I have a third penalty.

Claimant and Department’s Representative signed and dated this document.

- 3) Part 2 of the PRC is known as the “Self-Sufficiency Plan” and contains activities agreed upon by the WV WORKS recipient and his/her worker, along with time limits or due dates for the activities. (Exhibit D-3.) Among the activities Claimant agreed to undertake as a WV WORKS recipient were for him to begin a job- and life-skills class known as “Excel,” on July 11, 2011, and for him to participate in this class for 85 hours per month. Claimant signed and dated the Self-Sufficiency Plan on July 7, 2011.
- 4) Department’s representative submitted as evidence Excel Weekly Participant Progress Reports and a WV WORKS Participation Time Sheet for the month of October 2011, indicating that Claimant participated for 33 hours that month, and did not attend Excel class after October 19, 2011. (Exhibit D-5.)

- 5) West Virginia Income Maintenance Manual, Chapter 13.9 (Exhibit D-4) states in pertinent part:

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.

DEFINITION OF SANCTION

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 the benefit amount, prior to recoupment, the AG [assistance group] is currently eligible to receive, for three months.

2nd offense – 2/3 reduction in the benefit amount, prior to recoupment, the AG [assistance group] is currently eligible to receive, for three months.

3rd Offense and all subsequent offenses – Ineligibility for cash assistance for three months.

- 6) Department's Representative stated that she imposed a third sanction on Claimant's WV WORKS benefit on November 2, 2011. She stated that a letter informing Claimant of the proposed action was sent to him on that date. (Exhibit D-2.)
- 7) Department's Representative stated that she received a document from [REDACTED] Medical Center on November 16, 2011. (Exhibit D-6.) This document states as follows:

Tuesday, 11/15/2011

Work Release Form

This notice verifies that the above-named employee was seen and treated in our emergency department on the above printed date. The employee will be able to return to work on December 1, 2011. The employee has the following restrictions: Patient not able to attend classes, secondary to needing medical attention to ongoing process. These restrictions apply through December 1, 2011. After this date, the employee should be able to participate in all work duties.

Department's Representative also stated that she received print-outs from Claimant's medical file at [REDACTED] Health Center. (Exhibit D-7.) These print-outs are from Claimant's progress notes, dated January 19, 2010, August 22, 2011, and September 27, 2011. They document various medical examinations on the above-listed dates.

- 8) Claimant testified that he contracted some unidentified medical ailment that caused skin infections to form on his body. He testified that he went to see his doctor in October, 2011, and his doctor ordered him not to return to his work activity until these infections could be treated. He stated that he forgot to obtain a doctor's statement for the October physician's appointment. He stated that he asked his doctor's office to send to the DHHR office verification of his medical condition, and he did not know why the office sent the wrong examination notes. He submitted into evidence written statements from his neighbors (Exhibits C-1, C-2, C-3 and C-4) stating that he was unable to attend a work activity in October 2011.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that a WV WORKS cash assistance recipient must sign a Personal Responsibility Contract and must participate in the activities listed on the Self-Sufficiency Plan portion of the Contract.
- 2) Department's Representative submitted evidence to indicate Claimant agreed to participate in the Excel job- and life-skills class beginning on July 11, 2011. The evidence indicates Claimant only participated in this class for 33 hours in October, 2011, and did not attend after October 19. Department's Representative imposed a third sanction on Claimant's WV WORKS benefit because he did not obtain his assigned hours in October 2011 and stopped attending this activity.
- 3) Claimant stated he had a health condition and was ordered by his physician to not participate in a work activity until his health condition could be treated.
- 4) The only submitted documentation concerning Claimant's health condition indicated he made an emergency room visit on November 15, 2011, and was directed not to participate in work activities until December 1. There was no documentation to indicate that Claimant was ordered by a physician not to participate in work activities in October.
- 5) Because Claimant stopped attending the activity he agreed to perform on his July 7 PRC, and because he did not provide to the WV WORKS unit documentation that a physician ordered him to stop attending this activity, the Department acted correctly to impose a third sanction on Claimant's WV WORKS benefit.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to impose a third sanction against Claimant's benefit in the WV WORKS program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd day of March 2012.

**Stephen M. Baisden
State Hearing Officer**