



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

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

February 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 10, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to impose a third WV WORKS 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 and Supplemental Nutrition Assistance Program is based on current policy and regulations. These regulations provide that when a member of the AG or non-recipient Work-Eligible Individual does not comply with requirements found on his Personal Responsibility Contract, a sanction must be imposed unless the Worker determines that good cause exists. SNAP benefits are not increased when the check decreases due to a sanction (WV Income Maintenance Manual § 13.9 and 13.11).

The information submitted at your hearing revealed that you did not meet your participation hours as required by policy to receive WV WORKS. SNAP benefits cannot be increased when a reduction in income is due to a WV WORKS sanction.

It is the decision of the State Hearing Officer to **Uphold** the action of the Department to impose a third WV WORKS sanction against your benefits.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Laura Hoggard, Family Support Specialist

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2568

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondents.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 10, 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 on a timely appeal, filed December 1, 2011.

II. PROGRAM PURPOSE:

The programs entitled WV WORKS and Supplemental Nutrition Assistance Program (SNAP) are administered by the West Virginia Department of Health and Human Resources.

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.

The purpose of the Supplemental Nutrition Assistance Program (SNAP) is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture.

III. PARTICIPANTS:

-----, Claimant
Laura Hoggard, 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 decision to terminate Claimant's WV WORKS.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 13.9, 13.11 and 24.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing/Grievance Request Notification
- D-2 Case Comments (CMCC) dated October 25, 2011 from RAPIDS Computer System
- D-3 Personal Responsibilities Contract dated October 25, 2011
- D-4 Referral for Training/Services dated October 25, 2011
- D-5 Case Comments (CMCC) dated November 7, 2011 – November 14, 2011 from RAPIDS Computer System
- D-6 Notification Letter dated November 15, 2011
- D-7 Case Comments (CMCC) dated November 21, 2011 from RAPIDS Computer System
- D-8 Work Excuse dated November 19, 2011
- D-9 Case Comments (CMCC) dated November 28, 2011 – December 1, 2011 from RAPIDS Computer System
- D-10 Case Comments (CMCC) dated December 1, 2011 from RAPIDS Computer System
- D-11 Participant Time Sheet for November 2011
- D-12 Individual Comments from E-RAPIDS Computer System
- D-13 Case Comments (CMCC) dated December 16, 2011 from RAPIDS Computer System
- D-14 WV Income Maintenance Manual § 24.3

Claimants' Exhibits:

VII. FINDINGS OF FACT:

- 1) Claimant applied for WV WORKS on October 25, 2011. She was assigned to attend Strategic Planning in Occupational Knowledge (SPOKES) classes for 30 hours a week or 128 hours a month as her work activity beginning October 31, 2011 (D-3 and D-4).
- 2) A third sanction was proposed against Claimant's WV WORKS benefits on November 14, 2011 for her failure to attend SPOKES classes for six (6) consecutive days. A good cause appointment was held November 21, 2011. Claimant advised her caseworker that she had pneumonia and was also suffering from sciatic nerve problems (D-6, D-7 and D-11).

Claimant submitted a doctor's statement excusing her from work activities from November 19, 2011 through November 21, 2011. Claimant was advised that the statement only excused her for three (3) days of SPOKES classes and she needed to submit excuses for the remaining eight (8) days for November (D-7 and D-11).

- 3) Claimant failed to submit additional doctors' excuses for the days she failed to attend SPOKES class in November. A third sanction was imposed against Claimant's WV WORKS benefits. Claimant's SNAP benefits did not increase due to the imposed sanction (and D-12 and D-13).
- 4) Claimant testified that she was having sciatic nerve pain in November and went to the emergency room on November 5, 2011. Claimant stated she went back to the emergency room the next day when the pain worsened.

Claimant stated she was unable to walk and was in physical therapy for the sciatic nerve. She also developed pneumonia in November and could not attend SPOKES classes. Claimant presented a doctor's excuse for November 19, 2011 through November 21, 2011 (C-1). Claimant stated she could not get additional work excuses from the emergency room as she was instructed to follow up with her physician.

- 5) WV Income Maintenance Manual § 13.9 A states:

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.

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

- 6) WV Income Maintenance Manual § 24.3 A(1) states:

One-Parent Families

The minimum hours of participation are 128 hours/month or 30 hours/week.

- 7) WV Income Maintenance Manual § 24.3 B(2) states:

Excused absences of up to 16 hours/month, not to exceed a maximum of 80 hours in the 12-month period, including the current and the preceding 11 months, may be counted as hours worked in that month. The hours worked include the excused hours when participation did not actually occur. An excused absence includes illness or other good cause which prevented participation. It is the responsibility of the Worker to determine if the absence is excused or unexcused based on contact with the employer/contractor and client documentation. A determination of good cause may only be made by the WV WORKS staff.

Excused absences must not be used toward calculating the monthly participation hours, unless the Worker has determined that the absences meet the definition of what may be excused and the participant was scheduled to work that day. The Worker must document in comments why the absences are being excused and how the reason for the absence was verified.

For each month the Worker must record in Work Program comments the number of hours of excused absences counted towards participation for the current month and the absence hours credited for the preceding 11 months. Each month, the preceding 11 months plus the current month must be reviewed to ensure the 80-hour limit is not exceeded in any 12-month period.

- 8) WV Income Maintenance Manual § 13.11 states:

A WV WORKS sanction may result in application of a SNAP penalty when the WV WORKS sanction results from failure to comply with a

requirement related to an activity which is listed in Sections 24.6 - 24.13. Even though the WV WORKS check amount decreases due to the sanction, SNAP benefits must not increase.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates a WV WORKS single parent must participate in an assigned work activity a minimum of 128 hours monthly. Two (2) days of excused absences from the work activity are permitted and any additional missed hours must be made up before the end of each month. Policy prohibits an increase in SNAP benefits when a decrease in income is due to a sanction.
- 2) Claimant attended SPOKES classes twenty-eight (28) hours in November 2011 and provided doctors' excuses for six (6) days. Claimant was unable to make up the remaining hours in November required to participate in WV WORKS.
- 3) A third sanction was correctly imposed against Claimant's WV WORKS benefits for failing to participate in her assigned work activity. Claimant is not entitled to an increase in SNAP due to the imposition of the sanction.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a third WV WORKS sanction against Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th day of February 2012

Kristi Logan
State Hearing Officer