



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 8, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 17, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to close your WV WORKS benefit for failing to attend a work activity for five consecutive days at the beginning of the activity.

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 an individual must be placed in a work activity as soon as possible after approval of his or her WV WORKS application. He or she must then begin this work activity as scheduled and complete all hours for five consecutive assigned work days to meet the participation eligibility requirement. If he or she fails to participate as specified on the Personal Responsibility Contract (PRC), the WV WORKS benefit is closed unless good cause for failure to participate has been established. (West Virginia Income Maintenance Manual §15.7)

The information submitted at this hearing revealed that in November 2011, your WV WORKS benefit was closed because you did not participate for the first five consecutive days of the beginning date of the work activity agreed upon when you completed your PRC, and you did not establish a good cause for this failure.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to close your WV WORKS benefits based on your failure to participate in your work activity for the first five consecutive days of the assignment.

Sincerely,

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

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

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

-----,

Claimant,

v.

ACTION NO.: 11-BOR-2589

**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 8, 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 at the [REDACTED] County office of the WV DHHR in [REDACTED] WV, on February 17, 2012, on a timely appeal filed December 9, 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

Sherry Britt, Economic Services Worker, 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, §15.7 and §24.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV WORKS orientation form, DFA-WVW-4
- D-2 Personal Responsibility Contract (PRC), signed and dated by Claimant and Family Support Specialist on November 14, 2011
- D-3 Letter from Department to Claimant dated November 28, 2011
- D-4 Copy of Income Maintenance Manual Chapter 15.7.A showing WV WORKS recipient responsibility for participating in a work activity for five consecutive days at the beginning of benefit receipt
- D-5 Case recordings from Defendant's WV WORKS case record, from November 29, 2011 to December 13, 2011
- D-6 Personal Responsibility Contract (PRC), signed and dated by Claimant and Family Support Specialist on December 9, 2011
- D-7 Case recordings from Defendant's WV WORKS case record, from December 13, 2011 to January 19, 2012
- D-8 Screen prints from the WV Electronic Benefits Transfer (EBT) Administration System, indicating transaction history for Claimant's EBT card
- D-9 EXCEL Program time sheet for November 2011 and Return-to-Work statement from [REDACTED] dated November 22, 2011

VII. FINDINGS OF FACT:

- 1) In December, 2011, the WV WORKS unit of the WV DHHR for [REDACTED] County, WV closed Claimant's WV WORKS benefit due to his alleged failure to participate in a work activity for the first five consecutive days after the beginning of his assigned activity.

Claimant requested a Fair Hearing on December 9, 2011, in order to protest the termination of his WV WORKS benefit.

- 2) On November 14, 2011, Claimant signed and dated a Personal Responsibility Contract (PRC.) (Exhibit D-2.) 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 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 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 . . .

- 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. 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 November 21, 2011, and to participate in this class for 128 hours per month. Claimant signed and dated the Self-Sufficiency Plan (Exhibit D-2) on November 14, 2011.
- 4) Department’s representative submitted as evidence an Excel Participation Time Sheet for the month of November 2011, indicating that Claimant participated for 10 hours that month. The Time Sheet indicated Claimant worked for six and one-half hours on November 28, four hours on November 29, and for November 30, the person who completed the sheet entered “0” hours and noted, “Dr. Appointment: no excuse.” (Exhibit D-6.)
- 5) West Virginia Income Maintenance Manual, Chapter 15.7 (Exhibit D-4) states in pertinent part:

Starting on the first day that WV WORKS benefits are received, a Work-Eligible Individual is subject to the work requirement. Therefore, the individual must be placed in a work activity as soon as possible. This placement should occur when the benefit is approved, concurrently with the initial assessment of the recipient’s skill, prior work experience, and

determination of employability. If the individual initially has a documented good cause for not participating, he is temporarily excused from participating . . . If the Worker determines that the person is ready to participate at application, the Worker approves the benefit . . . The participant must then begin his work activity as scheduled and complete all assigned hours for 5 consecutive assigned work days to meet his participation eligibility requirement. If he fails to participate as specified on his [PRC], the WV WORKS benefit is closed after good cause for failure to participate has not been established.

- 6) Department's Representative stated she scheduled a good cause appointment for Claimant on December 8, 2011, to give him an opportunity to explain why he did not attend the Excel class. She submitted into evidence a copy of a letter she sent to him on November 28, 2011, informing him of the appointment. (Exhibit D-3.) Department's representative submitted into evidence copies of case recordings from Claimant's case record from November 29 to December 13, 2011, indicating Claimant rescheduled his good cause appointment to December 9, 2011. (Exhibit D-5.) The case recordings document that on December 9, she recorded the following information, in pertinent part:

[Claimant] in office for good cause on this date for failing to participate 5 consecutive days in assigned activity. [Claimant] was assigned to start Excel on 11/21/11. He stated that he had doctor excuse. Doctor excuse states that he was there on 11/21/11 and excuse is for 11/21/11 & 11/21/11. [Claimant] stated that he spoke to [Excel Instructor] and told her that he was not feeling any better and she told him that he did not have to come on 11/23/11 to his activity. Worker checked daily Excel report and there is no documentation that he called or spoke to [Instructor] about 11/23/11. [Claimant] attended activity on 11/28/11 for 6.5 hours and 11/29/11 for 4 hours. Timesheet stated that he left on 11/29/11 for HUD appointment and then for . . . doctor appointment on 11/30/11 . . . but no doctor excuse. [Claimant] has not shown up after 11/29/11 to his assigned activity. [Claimant] stated he do[es] not have any transportation to his activity . . . Worker informed him that the bus goes by [Claimant's home community]. [Claimant] stated that the bus only goes by there 3 days a week and he went out there and the bus never came by.

- 7) Department's Representative stated that Claimant attended the Good Cause appointment on December 9, 2011. She stated that she determined on that date Claimant did not have good cause for not attending his work activity, and she informed him that his case would be closed for failure to attend his work activity for the first five consecutive days of the assignment. She added that Claimant requested a fair hearing at this meeting, so she reinstated his WV WORKS benefit and placed him into another work activity.
- 8) Claimant stated he had a physician's excuse to account for his not attending his activity on November 21 and 22, 2011, and he stated he was still sick on November 23. He stated

he called the instructor of the Excel activity to inform her he was still ill, and she instructed him to stay home.

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. Policy further dictates that an individual who begins an activity must participate for five consecutive days.
- 2) Department's Representative submitted evidence to indicate Claimant agreed to participate in the Excel job- and life-skills class beginning on November 21, 2011. The evidence indicates Claimant did not attend from November 21 to November 23, attended on November 28, and attended on November 29 but not for a full day.
- 3) Department's Representative closed Claimant's WV WORKS benefit because he did not participate in his assigned activity for five consecutive days. The "five consecutive days" period for this activity was November 21 – 23, then November 28 and 29, due to the Thanksgiving holiday.
- 4) Claimant's time sheet for November 2011 indicated he had a doctor's excuse for November 21 and 22, but not November 23.
- 5) Because Claimant did not attend the activity he agreed to perform on his November 14 PRC, and because he did not provide to the WV WORKS unit documentation that a physician ordered him not to attending this activity on November 23, the Department acted correctly to close Claimant's WV WORKS benefit for failing to participate for five consecutive days.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to close 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 8th day of March 2012.

**Stephen M. Baisden
State Hearing Officer**