



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

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

February 13, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held February 9, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your WV WORKS cash assistance by implementing a third-level 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 benefit group does not comply with the requirements found on his or her Personal Responsibility Contract (PRC), a sanction must be imposed unless it is determined that good cause exists. For a third offense, the sanction consists of an ineligibility of assistance for a period of three months. (West Virginia Income Maintenance Manual Chapter 13.9)

The information which was submitted at your hearing revealed that you did not present good cause for your failure to comply with the requirements of the WV WORKS cash assistance program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to implement a third-level sanction against your WV WORKS cash assistance benefits and terminate your eligibility.

Sincerely,

Eric Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Megan Garland, Family Support Specialist

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-390**

**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 for Kimberly Bowers. 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 January 9, 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  
Megan Garland, Family Support Specialist

Presiding at the hearing was Eric L. Phillips , 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 was correct in its action to terminate the Claimant's WV WORKS cash assistance by implementing a third level sanction.

**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 Letter from Family Support Specialist dated September 29, 2011
- D-3 Letter from Family Support Specialist dated October 17, 2011
- D-4 WV WORK programs Individual Comment printout last retrieved February 9, 2012

**VII. FINDINGS OF FACT:**

- 1) The Claimant, who was a participant in the WV WORKS cash assistance program, was sanctioned due to her failure to maintain her eligibility for the program. Testimony indicated that the imposed sanction resulted in a termination of the Claimant's WV WORKS assistance.
- 2) The Claimant was placed in an exemption status for her WV WORKS participation and was required to provide a general physical from her attending physician in order to maintain such status for program requirements.
- 3) On September 29, 2011, the Claimant was issued Exhibit D-2, Letter from Family Support Specialist, documenting her requirement to provide the Department with the necessary documentation concerning her general physical. Exhibit D-2 documents in pertinent part:

Enclosed is a general physical form that must be filled out by your attending physician. This needs to be returned to me by no later than October 31, 2011. If you do not return this form a sanction may be placed on your case for failing to cooperate with the WORKS program. This is also to continue your exemption status for WV WORKS.

- 4) On October 17, 2011, the Claimant was issued Exhibit D-3, Letter from Family Support Specialist that extended the deadline for the Claimant to provide the required documentation. Exhibit D-3 documents in pertinent part:

Your medical review is due. Please have your doctor fill out the endlosed [sic] general physical form and return it within 30 days to me. If you do not have this for back to me a sanction will be applied to your case and your case will close for three months. Please call me with any questions or concerns you may have. If you believe this form will take longer than 30 days to be completed and returned you must call me at 304-267-0100 x 228.

5) On November 1, 2011, the Claimant met with Ms. Megan Garland, Family Support Specialist and was informed that the required documentation had been placed in the mail (Exhibit D-3). However, Ms. Garland testified that the Claimant phoned her in December 2011, and informed her that she had an appointment to complete the documentation with her physician that month. Ms. Garland stated that she had not received the documentation by December 27, 2011 and imposed a sanction on the Claimant's assistance. Ms. Garland indicated that a good cause hearing was scheduled for January 9, 2012, in which the Claimant failed to appear.

6) The Claimant purported that she confused the necessary documents that were required of her to maintain her eligibility for WV WORKS. The Claimant stated that she informed Ms. Garland that her "monthly review form" had been placed in the mail, but informed Ms. Garland that her physician required her to complete a "full physical" to facilitate the completion of the required general physical documents. The Claimant stated that her physician's office informed her that they had faxed and mailed copies of the documentation to the Department, but the documentation was never received.

7) West Virginia Income Maintenance Manual § 1.25 documents in pertinent part:

The Personal Responsibility Contract (PRC) is a contract between each of the adult or emancipated minor members of the WV WORKS AG, or non-recipient Work-Eligible Individual(s), and the Worker, as the representative of the Department. Completion and signature of the PRC form is required prior to approving the WV WORKS AG.

Failure, without good cause, to adhere to the responsibilities or any task listed on the PRC after signature, results in imposition of a sanction against the AG.

8) West Virginia Income Maintenance Manual §13.9 states:

When a member of the benefit group does not comply with the requirements found on his PRC, a sanction must be imposed unless the worker determines that good cause exists.

1<sup>st</sup> Offense - 1/3 reduction in the check amount for 3 months.

2<sup>nd</sup> Offense - 2/3 reduction in the check amount for 3 months.

3<sup>rd</sup> Offense and all subsequent offenses - Ineligibility for cash assistance for 3 months.

The client must also be given the opportunity to establish Good Cause.

9) West Virginia Income Maintenance Manual §13.10 states in pertinent part:

All mandatory Work-Eligible Individuals must be placed into a relevant and a current component for tracking and monitoring purposes on approval date. The participant must remain in that component whether or not they are working, cooperating, or sanctioned until either the case is closed or the Case Manager

and participant agree to change the component. Not meeting participation requirements or being sanctioned are not reasons to disenroll the participant from their assigned component(s). Some reasons for granting good cause for temporarily not meeting participation requirements are life events or problems such as, but not limited to:

- The death of a spouse, parent, child, or stepchild.
- In accordance with the Family and Medical Leave Act (FMLA) of 1993, an acute, life threatening illness of a spouse, parent, or child that requires the client's immediate attention. This does not include individuals who are exempt from participation due to caring for a disabled family member as outlined in section 13.8.
- The minimum suitability standards for the specific activity are not met. See Sections 24.5 – 24.13 for minimum requirements. If none are listed for the activity, the Worker must determine if the activity placed unreasonable requirements on the client. Individuals granted good cause for this reason must be scheduled an appointment or home visit to review the situation and possible PRC update.

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 PRC 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.

- The parent, an included non-parent caretaker, or a non-recipient Work-Eligible Individual quits employment or fails to participate in his assigned activity due to enrollment and full-time attendance in school, training, or an institution of higher learning. The PRC must be updated and these individuals should be placed in the VT, AB, or CL components as soon as possible.

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Failure or refusal to comply, without good cause, results in imposition of a sanction. When the Worker discovers the failure or refusal, a notice of adverse action must be issued. When a letter is mailed scheduling the good cause interview, the Worker must allow no less than 7 calendar days. This period begins the day following the date the letter is requested in RAPIDS, or the day following the date a manual letter is sent. If the letter is hand delivered, case

comments must be made indicating the date the letter was given to the client. If the appointment is scheduled for a date prior to the 7 calendar days, the participant and the Worker must agree on the appointment date. See Section 6.3, Items D and E, A Worker generated letter from RAPIDS or a manual letter, DFA-WVW-NL-1 is used.

### **VIII. CONCLUSIONS OF LAW:**

- 1) Policy stipulates that when a member of the benefit group does not comply with the requirements found on his PRC, a sanction must be imposed unless the worker determines that good cause exists. A penalty for a third-level sanction results in an ineligibility of WV WORKS cash assistance for a three month period. Policy lists specific circumstances in which the recipient may be granted good cause for the infraction and the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his or her ability, understands the requirements, and the sanction process. Policy notes that the worker has considerable discretion when imposing the sanction.
- 2) The evidence submitted revealed that the Claimant was required to provide documentation concerning a general physical from her attending physician in order to maintain her eligibility for the WV WORKS program. Evidence reveals that the Department exercised considerable discretion in applying a sanction to the Claimant's assistance by affording her multiple extensions to the documented due date. While the Claimant maintains that her physician faxed the necessary documentation to the Department, there was no evidence submitted to confirm the Department's recipient of the information within a three month time span. Whereas, the evidence demonstrates that the Claimant failed to submit documentation to maintain her eligibility, the Department was correct to impose a third-level sanction and terminate the Claimant's WV WORKS cash assistance.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the action of the Department to implement a third-level sanction against the Claimant's WV WORKS cash assistance and terminate eligibility.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of February, 2012.**

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**Eric L. Phillips  
State Hearing Officer**