



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

February 9, 2012

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 reduce your WV WORKS cash assistance based on the imposition of a first (1st) 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 West Virginia 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. The client must be given the opportunity to establish good cause. For a first offense, the sanction consists of 1/3 reduction of the check benefit for 3 months. (West Virginia Income Maintenance Manual §13.9)

The information submitted at your hearing demonstrates that the Department was correct in applying a first (1st) level sanction against your West Virginia WORKS cash assistance benefits.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a first (1st) level sanction in your WV WORKS case.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Rich Radford, [REDACTED] DHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-413

**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 ----- . This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual §700. This hearing convened on February 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

Rich Radford, Department Representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to impose a first (1st) level sanction against the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 13.10, 24.3, and 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Personal Responsibility Contract (PRC) dated December 6, 2011
- D-2 Excerpts from case comments from Department's computer system

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving West Virginia WORKS, hereinafter WV WORKS, cash assistance when on January 12, 2012, the Department determined that she had not cooperated by meeting the terms of her Personal Responsibility Contract, hereinafter PRC, during the month of December 2011.
- 2) The parties agreed that the Claimant had previously signed a PRC in which she and the Department agreed that she would complete community service for a minimum of eighty-five (85) hours monthly to meet her participation requirements. The Claimant's PRC (D-1) indicates that she agreed to begin the activity on the same date she signed the PRC, that being December 6, 2011.
- 3) The Department sent the Claimant a notification letter which informed her that a good cause appointment had been scheduled for her and on January 18, 2012, she appeared for that appointment. She reported (D-2) on that date that she did not attend the activity because licensed child care was ten (10) minutes away from her home and she could not afford the gas.
- 4) The Department found no good cause because the distance from her home to a licensed child care facility was found to be reasonable, and because the Department had been reimbursing her for travel expenses. The case comments indicate (D-2) that the Department approved the

Claimant for one hundred forty-four dollars (\$144.00) travel pay in December 2011 for November 2011 travel.

- 5) The Claimant contends that it was unreasonable for her to travel for ten minutes to a licensed day care facility for child care when the facility where she was to perform community service was less than a mile from her home. She stated she could not afford to pay for the gas. She added that originally she had arranged for child care to be provided by someone who lived in her apartment complex, but added that the individual decided to stop being her child care provider.
- 6) Policy found in Chapter 1.25, T, of the West Virginia Income Maintenance Manual provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG (assistance group) and the Worker. Failure, without good cause, to adhere to the responsibilities contained in Part 1 of the PRC results in imposition of a sanction against the benefit group. Refusal or other failure, without good cause, to adhere to the self-sufficiency plan (Part 2 of the PRC) results in imposition of a sanction against the benefit group.
- 7) West Virginia Income Maintenance Manual section 24.3 states in pertinent part:

A. REQUIRED PARTICIPATION

Each adult and emancipated minor who receives WV WORKS benefits and non-recipient Work-Eligible individual must meet a work requirement at a minimum rate of participation.

A single Work-Eligible parent with a child under age 6 meets the work participation requirement by participating 85 hours/month or 20 hours/week.

B. ABSENCES

Workers must determine whether absences are excused or unexcused.

School breaks are not counted as participation hours. Only Federally designated holidays which occur during the regular school year are counted as participation hours. These include New Year's, Martin Luther King Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

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.

C. PARTICIPANT DOCUMENTATION

1. Methods of Documenting Participation Hours

All hours of participation in activities must be verified. The Participant Timesheet, DFA-TS-12, is the standard timesheet used to document participation. When used, it is given to providers to report attendance and satisfactory progress in the activity. These timesheets may also be given to the client to have providers complete. Some employers/sponsors have their own timesheets. These are acceptable means of verification as long as these timesheets provide the necessary information and are signed by the site supervisor. Documentation is required and must be available from the activity site at least monthly to support what is reported for participation and may include electronic records.

8) West Virginia Income Maintenance Manual section 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.

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

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

3rd Offense and all subsequent offenses - Ineligibility for cash assistance for 3 months or until compliance, whichever is later.

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

9) West Virginia Income Maintenance Manual 24.4 states:

The Worker must assist the client in all reasonable ways to achieve self-sufficiency. To accomplish this, the Worker must assess the client's knowledge and skills, work with the client and make informed recommendations about courses of action appropriate for each individual to develop a plan that is expected to lead to self-sufficiency. In addition, he must enter into an agreement with the client concerning his involvement in the process of becoming self-sufficient, monitor the client's progress to determine changing needs and the need for support service payments and take appropriate follow-up action based on the client's actions.

To meet the goals of the WV WORKS Program, a worker performs the following activities for WV WORKS families:

- Negotiates the PRC with the client to determine the best means to
- achieve self-sufficiency and accept personal responsibility.
- Monitors compliance with the PRC
- Determines good cause for failure to comply with the PRC
- Applies sanctions as appropriate

- 10) The West Virginia Income Maintenance Manual §13.10 provides policy in relation to good cause for failure to participate for the WV WORKS cash assistance program. This policy states in relevant 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.

When the worker determines that the client has good cause for failure to participate for one of the reasons listed in items A through E below, the participant must be placed in the appropriate good cause component.

C. CHILD UNDER 6 / UNAVAILABLE CHILD CARE (TD)

A single parent can prove that appropriate child care is unavailable for his child, under age 6. The client must accept available child care unless it is an unreasonable distance from the individual's home or work site.

VIII. CONCLUSIONS OF LAW:

- 1) The purpose of this hearing is to determine whether the Department correctly applied a first (1st) level sanction against the Claimant which resulted in a 1/3 reduction in her WV WORKS cash assistance benefit for three months.
- 2) Applicable policy provides that an individual is obligated to negotiate and sign a PRC before becoming eligible for WV WORKS cash assistance. He or she is then obligated to abide by the terms and conditions of the agreement in order to maintain eligibility for WV WORKS cash assistance. Failure to comply results in a sanction unless good cause is found.
- 3) The parties agreed that an up-to-date PRC agreement on was entered into by the parties on December 6, 2011, at which time the Claimant agreed to participate in a community service activity for a total of eighty-five (85) hours per month. The PRC indicates the activity was to begin on December 6, 2011. The Claimant did not attend the activity at all during December 2011 and the Department subsequently imposed a sanction on her case.
- 4) The Claimant contended that it was unreasonable for her to travel for ten (10) minutes to a licensed day care facility.
- 5) Policy provides that when individuals do not attend their assigned activity for the minimum number of assigned hours, a good cause interview is to be conducted prior to the Department applying a sanction to the case. This good cause interview is completed to determine whether the participant has good cause for not meeting his or her assigned hours, and whether the issue can be resolved without applying a sanction to the case.

- 6) The Department conducted a good cause interview with the Claimant. At that time, the Claimant reported she could not afford to pay for gas to travel ten minutes to a day care facility for day care for her child.
- 7) Policy provides that one reason for finding that good cause exists is when a single parent can prove that appropriate child care is unavailable for his or her child, under age 6. The Claimant claimed that it is unreasonable for her to travel ten (10) minutes to the licensed child care facility and that she cannot afford the gas.
- 8) The totality of the evidence supports that the Department was correct in its determination that the Claimant failed to attend her scheduled activity during December 2011, and that she did not show good cause for failure to attend as scheduled. Ten (10) minutes is found to be a reasonable amount of time to travel to secure child care. The Claimant was receiving travel pay from the Department monthly to reimburse her for her travel expense. She received one hundred forty-four dollars (\$144.00) travel pay in December 2011 for her travel during November 2011. The evidence supports that the Department was correct in its determination at the good cause interview that no good cause existed.
- 9) As a result of all the above conclusions, the Department was correct in applying a 1/3 level sanction to this case.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the ruling of the State Hearings Office to **uphold** the Agency's decision to apply a 1/3 level sanction to your WV WORKS benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th Day of February, 2012.

Cheryl Henson

State Hearing Officer