



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 West Virginia (WV) WORKS cash assistance based on the imposition of a second (2nd) 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. The client must be given the opportunity to establish good cause. For a second offense, the sanction consists of 2/3 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 not correct in applying a second (2nd) level sanction against your WV WORKS cash assistance benefits.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a second (2nd) 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
Gary Keen, [REDACTED] DHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-414

**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, in Chapter 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
-----, Claimant's witness

Gary Keen, 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 second (2nd) level sanction against the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual §1.25, 13.9 and 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Self-Sufficiency Plan signed December 19, 2011 by Claimant
- D-2 Excerpts from the Department's case comments in its computer system
- D-3 Client Summary from Department's computer system
- D-4 Individual comments from the 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 11, 2012, the Department determined that she did not meet her minimum required hours of participation during the month of December 2011.
- 2) The parties agreed that the Claimant previously signed a Personal Responsibility Contract, hereinafter PRC, on December 19, 2011, in which she and the Department agreed that she would attend a class called SPOKES for a minimum of one hundred eighteen (118) hours monthly to help her prepare for her General Equivalency Diploma (GED) test. The parties disagree, however, as to when the Claimant was to begin the class.
- 3) The Department contends the Claimant was to begin the class on December 19, 2011, which is the day she signed the PRC agreement. The Department did not receive a timesheet for the Claimant for December 2011 and subsequently sent the Claimant notification that a 2nd level sanction was being applied to her case effective February 1, 2012.
- 4) The Claimant was scheduled and attended a Good Cause appointment on January 17, 2012, to determine whether good cause existed for her failure to attend the class during December 2011. The Department documented (D-2) that the Claimant reported at that time that the worker who

completed her PRC on December 19, 2011, told her could wait until January 3, 2012 to begin the class. The Department also documented on this date that the worker involved in the negotiation of the PRC agreement did not remember whether she told the Claimant to start on December 19, 2011 or January 3, 2012.

- 5) The Claimant contends that she was originally told by the Department worker to start on December 20, 2011, but that when she arrived at the class on that date she was told that she would need a new referral from the Department since several months had elapsed since she last attended. She stated that she spoke to the Department worker on or about December 20, 2011, regarding the situation and was told by the worker to come in for the referral on January 3, 2012, due to the upcoming holidays.
- 6) The Claimant contends that she came in to the Department's office on January 3, 2012 as instructed. Case comments (D-2) show that she completed a case review on that date and that a referral was provided to the Claimant for child care. There is no mention of a referral to the class itself in case comments (D-2) for that date.
- 7) The PRC (D-1) form indicates that the parties agreed that the Claimant would begin the class on December 19, 2011. However, individual case comments from the Department's computer system (D-4) show that a Department worker entered comments into the system on that same date indicating the Claimant "will attend SPOKES orientation 12/27/11." The latter case comments are not supporting of the date entered on the PRC; however, no explanation is documented to explain the discrepancy. The different documented start dates appear to corroborate the Claimant's testimony in regard to the change in start date after the PRC was negotiated.
- 8) 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.
- 9) 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.

10) 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

VIII. CONCLUSIONS OF LAW:

- 1) The purpose of this hearing is to determine whether the Department correctly applied a 2nd level sanction against the Claimant which resulted in a 2/3 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 was entered into by the parties on December 19, 2011, at which time the Claimant agreed to participate in SPOKES classes to help prepare for her GED test. The parties agree that the Claimant did not participate in the class during December 2011.
- 4) Policy provides that when individuals do not participate in 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.

- 5) The Department conducted a good cause interview with the Claimant on January 17, 2012. At that time, the Claimant reported that she was told by the worker that she could delay starting the class until January 3, 2012. The Department was unable to corroborate this with the worker involved because the worker was unable to remember the specifics in regard to a start date. The Department found no good cause and imposed the sanction.
- 6) The totality of the evidence supports that there was confusion as to when the Claimant would start the SPOKES class. The PRC indicates a start date of December 19, 2011, the same day the Claimant signed the PRC. However, individual case comments made by the Department worker on that same date indicate the Claimant is to start the class on December 27, 2011, for orientation.
- 7) The Claimant's testimony regarding the circumstances that occurred after she signed the PRC is found to be reasonable and credible, and is supported to some degree by the documented comments in the Department's computer system. There are clearly two different dates found within the Department's documentation as to a start date for the class, and it is not reasonable for the Department to expect the Claimant to attend class during a month when they were not clear, as evidenced in their documentation, as to a start date.
- 8) As a result of all the above conclusions, the Department was not correct in applying a 2nd 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 **reverse** the Agency's decision to apply a 2/3 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**