



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

April 18, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 12, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your WV WORKS cash assistance by imposing 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 ineligibility for assistance for a period of three months. (West Virginia Income Maintenance Manual Chapter 13.9)

The information submitted at your hearing revealed that you did not present good cause for your failure to comply with the requirements of your Personal Responsibility Contract.

It is the decision of the State Hearing Officer to uphold the action of the Department to impose a third level sanction against your WV WORKS cash assistance and terminate your benefits for three months.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review  
Cindy Myers-Family Support Supervisor

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

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

**Co-Claimants,**

**v.**

**ACTION NO.: 12-BOR-748**

**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 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 February 21, 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:**

---- ----, Co-Claimant

---- ----, Co-Claimant

Pam Moreland, Economic Service Worker-WVDHHR

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 imposing 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 West Virginia Income Maintenance Manual Chapter 1.25
- D-2 WV WORKS Personal Responsibility Contract for ---- ----
- D-3 West Virginia Income Maintenance Manual Chapter 13.9

**VII. FINDINGS OF FACT:**

- 1) On January 3, 2012, the Claimants completed a reapplication for WV WORKS cash assistance with Family Support Specialist Connie Flaughner, hereinafter FSS Flaughner.
- 2) Pam Moreland, Economic Service Worker, testified that the Claimants completed Personal Responsibility Contracts, hereinafter PRC’s, to establish their eligibility for the WV WORKS program. Exhibit D-2, WV WORKS Personal Responsibility Contract for ---- ----, documents his goals and assignments as a participant in the WV WORKS program as:

Goals	Target Date
Employment	1/03/2012
Volunteer	3/31/2012
Assignments	Begin Date/Due Date
Notify Worker of any changes	1/3/12-N/A
Minimum of 150 hours per month	1/3/12-N/A
Time Sheets by 5 <sup>th</sup>	1/3/12-N/A
Take TABE test no later	1/3/12-1/27/12
Take LNS	1/3/12-1/27/12
Be available for home visit @ 11:30	1/3/11-1/19/11 [sic]
Verify work activity [sic] no later than	1/3/11-1/19/11 [sic]
Complete & Return Self-Sufficiency Apprais [sic]	1/3/11-1/13/12
Attend Work First Workshop 9-3	1/3/12-1/19/12
Attend Work First Workshop 9-3	1/3/12-1/20/12

It shall be noted that the document provided as evidence is an unsigned copy of the PRC. Testimony indicated that ---- signed the original copy on the date of the reapplication for benefits and agreed to the outlined goals and assignments.

- 3) On January 19, 2012, FSS Flaughter completed a home visit with the Claimants, the same date on which ---- was required to attend the Work First Workshop with the Workforce Investment Board. During the home visit, ---- was unclear of her husband's whereabouts and reported to FSS Flaughter that her husband was either seeking employment or in attendance at the assigned workshop. ---- later phoned FSS Flaughter and reported that he had forgotten about the scheduled workshop and was not in attendance.
- 4) Ms. Moreland testified that FSS Flaughter imposed a subsequent third sanction on the Claimants' WV WORKS cash assistance and scheduled a good cause appointment on February 21, 2012 at 10:00 A.M. to discuss the sanction. At the good cause appointment, ---- explained to FSS Flaughter that he was seeking employment and had forgotten about the scheduled workshop. Testimony indicated that FSS Flaughter did not grant good cause for ----'s failure to attend the workshop and imposed a sanction on the WV WORKS benefits effective March 2012 through May 2012.
- 5) ---- testified that FSS Flaughter assigned him to the Work First Workshop without inquiring about the household's lack of available transportation. ---- testified that he was searching for employment and forgot about the first scheduled day of the two-day workshop, but was willing to attend the second scheduled day. ---- stated that the Workforce Investment Board would not allow him to attend the second day of the workshop and scheduled him to complete the workshop the following month. ---- attended the good cause appointment and explained to FSS Flaughter that he had forgotten about the workshop and was willing to complete the assignment the following month, but later received notification that his assistance had been terminated. ---- stated that he did not inform FSS Flaughter about any transportation issues during the reapplication or at the good cause appointment.
- 6) 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.

- 7) 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.

8) 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.

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.

Clients in any of these components are still considered in the federal participation rate calculation.

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#### OTHER GOOD CAUSE REASONS (NA)

The following are circumstances that may be experienced by individuals who are not temporarily exempt and not currently in an activity, or who are not meeting the minimum participation hours while in an activity, but have good cause for failing to participate:

- The 12-week postpartum period following the birth of any additional child after having used the 12 month lifetime Age of Child (TF) period. Anytime other than the usual 12-week period requires medical documentation of the expected return to work date.

- The 12-week period following the placement of a child with the individual for adoption or foster care.

A verified activity will start within 30 days and there is no other activity available in the interim

- The individual is required to appear in court or for jury duty.

- A requirement of the Division of Children and Adult Services precludes participation for a specified period of time.

- The individual refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.

- The individual would be required to travel more than 1 hour round trip to participate, unless it can be shown that local community travel standards exceed the 1 hour limitation.

- There is no transportation currently available to the client and all possible sources of transportation have been explored. He must accept appropriate available transportation in the community.

### **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 termination 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. Additionally, policy allows for good cause for the individual's inability to participate in an activity when there is no transportation currently available to the individual and all possible sources of transportation have been explored.
- 2) The evidence in this case clearly demonstrates that the Claimant failed to comply with the provisions outlined in his PRC. During the hearing process, the Claimant purported transportation issues which may have attributed to his inability to comply with the PRC; however, by the Claimant's own admission, the issues concerning transportation were never related to the Department while establishing the PRC or during his attempt to establish good cause for the imposed sanction. Therefore, the Claimant failed to present good cause for his non-compliance with the PRC and the Department's decision to impose a third-level sanction is affirmed.

**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.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

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

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**Eric L. Phillips**  
**State Hearing Officer**