



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Earl Ray Tomblin
Governor

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

April 18, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 3, 2012. Your hearing request was based on the action of the Department of Health and Human Resources to terminate your WV WORKS benefits based on the application of 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) or Self-Sufficiency Plan (SSP), a sanction must be imposed unless it is determined that good cause exists. For a third offense, the sanction consists of ineligibility for cash assistance for 3 months. (West Virginia Income Maintenance Manual § 13.9)

Information submitted at your hearing demonstrates that you failed to comply with the requirements of your Personal Responsibility Contract (PRC).

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your cash assistance based on the imposition of a third-level sanction in your WV WORKS case.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review
Susan Pomp, FSS, DHHR

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

---- ----,

Claimant,

v.

Action Number: 12-BOR-752

**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 hearing was convened on April 3, 2012 on a timely appeal filed February 22, 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 Spouse

Susan Pomp, Family Support Supervisor (FSS), WVDHHR

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department of Health and Human Resources was correct in its action to terminate the Claimant's WV WORKS cash assistance benefits based on the imposition of a third-level sanction.

V. APPLICABLE POLICY:

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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Verification of first-level sanction - applied in June 2004
- D-2 Verification of second-level sanction – applied September 2004
- D-3 Verification of third-level sanction – applied November 2004
- D-4 Case Comments for period 5/4/04 through 10/27/04
- D-5 WV WORKS Issuance History – Disbursement, January 2004 through February 2012
- D-6 Notice of Decision dated February 9, 2012
- D-7 WV WORKS – Self-Sufficiency Plan (DFA-SSP-1)
- D-8 WVDHHR Referral for Training/Services (DFA-WVW-70)
- D-9 WVDHHR Division of Family Assistance Participant Time Sheet (February 2012)
- D-10 WVDHHR Division of Family Assistance Participant Time Sheet (January 2012)
- D-11 West Virginia Income Maintenance Manual, Chapters 1.25, 13.9, 24.3 and 13.9

VII. FINDINGS OF FACT:

- 1) The Department of Health and Human Resources, hereinafter Department, represented by Susan Pomp, a Family Support Supervisor (FSS), presented evidence (Exhibit D-6) to indicate the Claimant was notified via a Notice of Decision dated February 9, 2012 that a third-level sanction was being applied to her WV WORKS benefits. This notice states, in pertinent part:

Your WV WORKS /WVEAP benefits will stop. You will not receive this benefit after February 2012.

A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC) and/or the Self Sufficiency Plan (SSP).

This correspondence goes on to notify the Claimant that a good cause interview was scheduled on February 21, 2012 at 11:30 a.m.

- 2) The Claimant contended that a third-level sanction was not appropriate as she has never received a first or second-level sanction, and she further argued that she has complied with the requirements of her PRC and SSP.
- 3) The Department submitted a screen print of the following Personal Responsibility Sanctions Requests wherein good cause was not granted - Exhibit D-1 (verification of a first-level sanction in June 2004), Exhibit D-2 (verification of a second-level sanction in September 2004), and Exhibit D-3 (verification of a third-level sanction in November 2004).

The Department submitted Exhibit D-4 (Case Comments for period 5/4/05 to 10/27/04) to show that documentation entered by the Department worker corroborates the imposition of the previous three (3) sanctions. See case comments entered on 5/17/04, 8/17/04 and 10/8/04.

The Department further submitted Exhibit D-5 (WV WORKS Issuance History) that corresponds with the sanctions identified in Exhibits D-1, D-2 and D-3.

- 4) The Department presented testimony to indicate that the Claimant's Assistance Group (AG) was receiving cash assistance through the West Virginia Employment Assistance Program (EAP). The Department indicated that the Claimant's spouse was working full-time, and this program enables the employed, former WV WORKS recipient to continue to receive the TANF payment he received prior to becoming employed for the 12-month EAP period. However, when the Claimant's spouse was injured and he quit working in November 2011, the case should have immediately returned to a "PRC" case, which requires a 2-parent family to participate 35 hours per week/150 hours per month in a work activity. Because a PRC update was not completed until January 27, 2012, the Claimant's AG received EAP cash assistance through February 2012. However, the Claimant's WV WORKS case transitioned to a PRC case with WV WORKS participation requirements for cash assistance effective March 2012.
- 5) The PRC update included Exhibit D-7 (WVDHHR WV WORKS Self-Sufficiency Plan) and Exhibit D-8 (Referral for Training/Services), signed by the Claimant on January 27, 2012. These documents indicate that the Claimant agreed to attend SPOKES class 35 hours per week beginning January 30, 2012. The Claimant attended SPOKES on January 30, 2012 (Exhibit D-10), but contacted the Department office and stated that she needed to stay home because her husband was unable to care for their children. FSS Pomp testified that she advised the Grievant of the following options – (1) The Department could help the Claimant with child care if it was verified that her husband was medically unable to care for their children; (2) She could pursue an exemption from the work activity requirement if a physician provided a statement to indicate it was medically necessary that she stay at home and care for her husband; or (3) she could close the cash assistance check. The Claimant did not attend SPOKES on January 31, 2012, but dropped off a note from Preston Health Care Services that states (included in Exhibit D-10) – "Due to husband's condition ---- will need help with childcare [sic] or need to take off work." FSS Pomp testified that this does not indicate it was medically necessary for her to stay home and care for her husband and the Claimant refused child care services. The Claimant was again advised to secure a statement from her husband's orthopedic doctor at his appointment

scheduled on February 3, 2012, however, FSS Pomp testified that no additional medical documentation was submitted.

- 6) The Department submitted Exhibit D-9 (WVDHHR Participant Time Sheet) for February 2012, which verifies the Claimant attended SPOKES class four (4) days in February 2012 for a total of 15.5 hours. There is a reason for her absence listed on four (4) occasions, but the Department noted that only two (2) absences can be excused. Consequently, the sanction notice (D-6) was sent on February 9, 2012 and good cause was not established at the meeting on February 21, 2012.
- 7) The Claimant testified that she provided several medical statements and indicated that she refused child care because it would have only been needed on a limited basis while the children were home sick from school. The Claimant's spouse testified that he could handle one of the children at a time, but he could not handle all three. This information, however, does not explain why the Claimant was frequently absent from SPOKES class in February 2012. The Claimant and her spouse appeared to understand why their participation requirements changed and acknowledged that she did not attend SPOKES as agreed in the Self-Sufficiency Plan.
- 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 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) Pursuant to policy found in Chapter 24.3.A.2 of the West Virginia Income Maintenance Manual, each adult and emancipated minor who receives WV WORKS benefits must meet a work requirement at a minimum rate of participation. The minimum hours of participation for 2-parent families depend upon the receipt of federally funded child care. The participation requirement may be met by one or both parents. There is no requirement that each parent participate equally. When the family does not receive federally funded child care, the minimum number of hours of participation is 150 hours/month or 35 hours/week.
- 10) West Virginia Income Maintenance Manual, Chapter 24.3.B.2 (Individual Absences) establishes the guidelines for the treatment of hours missed in participation under WV WORKS. All missed time whether excused or unexcused, must be made up within the month in which it is missed. When it is possible to make up time missed, the worker must decide if the absence is excused or unexcused. Excused absences of up to 16 hours per month, not to exceed a maximum of 80 hours in the 12-month period, may be counted as hours worked in that month. Unexcused absences that cannot be made up during the month are not counted as hours of participation. Only the hours actually worked are used.
- 11) West Virginia Income Maintenance Manual, Chapter 13.9:
When a member of the benefit group does not comply with the requirements found on his PRC or SSP, 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. Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.

- 12) The West Virginia Income Maintenance Manual, Chapter 13.10, sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. This policy goes on to state that 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the benefit group does not comply with the requirements found on his/her PRC, a sanction must be imposed unless the worker determines that good cause exists. A third-level sanction results in closure/termination of cash assistance for three months. While there are specific circumstances noted in policy for which good cause can be granted, policy goes on to state that 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. Policy goes on to note once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.
- 2) Evidence submitted in this case demonstrates that the Claimant was receiving cash assistance through the West Virginia EAP option when her husband was medically unable to work. This changed the Claimant's WV WORKS participation requirements effective February 2012 (for March 2012 benefits). The Claimant's husband was medically exempt from a work activity, however, she was required to attend a work activity (SPOKES class) 35 hours per week/150 per month. When the Department was notified by the Claimant that her husband was unable to care for their children due to his medical condition, the Claimant was advised that she could remain eligible for cash assistance only if she accepted subsidized child care or received a statement from her husband's physician indicating it was medically necessary for her to stay at home and care for him. The Claimant subsequently refused subsidized child care, failed to provide verification that it was medically necessary to stay at home to care for her husband, and had no fewer than 13 unexcused absences from SPOKES class in February 2012.
- 3) The evidence further demonstrates that the Claimant's WV WORKS benefits have been in sanction status on at least three previous occasions. As a result, the Department's decision to impose a third-level sanction in the Claimant's WV WORKS case is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Claimant's WV WORKS benefits based on the imposition of a third-level sanction.

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.

**Thomas E. Arnett
State Hearing Officer**