



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

March 31, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-1406

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Donna L. Toler
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Christina Brown, Family Support Specialist

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

[REDACTED],

Claimant,

v.

Action No: 15-BOR-1406

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing convened on March 24, 2015, on an appeal filed February 5, 2015.

The matter before the Hearing Officer arises from the January 15, 2015 decision by the Respondent to apply a third sanction against Claimant's WV WORKS benefits.

At the hearing, the Respondent appeared by Christina Brown, Family Support Specialist. The Claimant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV WORKS Personal Responsibility Contract (PRC) and Self-Sufficiency Plan dated January 2, 2015
- D-2 [REDACTED]
Participant Sign-In Sheet dated January 2, 2015
- D-3 Individual Comments computer screen print dated December 8, 2014 through January 5, 2015
- D-4 [REDACTED] Participant Sign-In Sheets dated January 5, 6, 7, 8, 9, 12, 13 and 14, 2015
- D-5 [REDACTED] Participant Evaluation dated January 16, 2015 and signed by [REDACTED]
- D-6 Correspondence entitled Notice of Decision from WV DHHR to Claimant dated January 15, 2015
- D-7 Correspondence from WV DHHR to Claimant dated January 15, 2015
- D-8 Individual Comments computer screen print dated January 6, 2015 through January 26, 2015

- D-9 Case Comments computer screen print dated January 14, 2015 through January 27, 2015
- D-10 City of Charleston Employment Verification for Claimant, hire dated January 20, 2015
- D-11 Correspondence from WV DHHR to Claimant dated January 27, 2015

Claimant's Exhibits:

- C-1 West Virginia Department of Health and Human Resources Division of Family Assistance Participant Time Sheet, unsigned

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Claimant was a recipient and participant in the Department's WV WORKS cash assistance program. As a requirement of the program, the Claimant signed a Personal Responsibility Contract and Self-Sufficiency Plan (PRC/SSP) and agreed to maintain 85 hours of monthly participation in the [REDACTED] class from January 2, 2015 through January 30, 2015. The Claimant and the Respondent agreed that the Claimant could have one unexcused absence for the month. The PRC/SSP noted that additional unexcused absences could potentially result in the immediate termination of the [REDACTED] class. (Exhibit D-1)
- 2) Long term goals set forth on the PRC included that the Claimant would obtain full-time employment. The short-term goals of the PRC included that the Claimant would complete the [REDACTED] job-readiness course (Exhibit D-1). The Department's representative testified that the [REDACTED] classes are provided to assist program participants in job-readiness preparation, including instruction on preparing for interviews and constructing a resume.
- 3) The Department's representative stated that because the Claimant failed to attend [REDACTED] classes as agreed upon in the PRC/SSP, a third-level sanction was imposed to begin on February 1, 2015 (Exhibit D-6). The Department's representative stated that the Claimant had a total of five absences, four unexcused absences and one excused absence. The Department's representative reported that two absences were due to the Claimant's illness (January 6 and 13) one absence due to his children's illness (January 12), one absence due to illness and to attend a job interview (January 7), and one absence was marked as a no call/no show (January 14). The Department's representative testified that the Claimant was given good cause for his absence on January 12, 2015, because he provided verification from the daycare that his children did not attend due to illness.

- 4) The Claimant testified that there was a misunderstanding. He reported that he was sick the first week of classes but contended that he only missed one day for illness, January 6, 2015. The Claimant provided a copy of an unsigned time sheet showing he had one hour of homework on January 8, 2015. However, the participant time sheet did not indicate that the Claimant was absent on that date. The Claimant testified that on January 9, 2015, he notified his instructor that he would be absent on January 13, 2015, in order to attend an interview with the City of [REDACTED]. On January 13, 2015, the Claimant spoke with his worker via telephone and was told he had been terminated from the [REDACTED] class (Exhibit D-8). The Claimant testified that because he was told he was no longer a participant in the program he did not report to his classes on January 14.
- 5) The Department's representative testified that even had the Claimant demonstrated good cause for missing the classes, because of excessive absences he would have been unable to meet the mandatory 85 hours of participation for the month of January 2015.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §1.25 instructs that failure, without good cause, to adhere to the responsibilities or any task listed on the PRC after signature results in a sanction being imposed.

WV IMM §13.10, sets forth reasons for granting good cause due to life events and/or problems such as the death of a spouse, parent, child or stepchild; an acute life-threatening illness which requires the client's immediate attention; or an activity that places unreasonable requirements on the client. 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 is given considerable discretion in imposing a sanction.

WV IMM §13.9 indicates the sanction imposed for a third offense and all subsequent offenses is ineligibility for cash assistance for 3 months.

DISCUSSION

The Department terminated the WV WORKS benefits of the Claimant based on a third-level program sanction for non-compliance with the terms of the PRC/SSP contract outlining the program expectations of the Claimant.

Prior to the application of a sanction, the Department is required to provide the client the opportunity to establish good cause for failing to meet the program requirements. The Department found that the Claimant established good cause for failure to participate with respect to only one of five absences.

The Claimant testified that he was only absent on January 6, 2015, however, the Claimant failed to sign the [REDACTED] participant sign-in sheets on January 6, 7, 12, 13 and 14, and provided no

evidence establishing that he was in the classes on those dates. The sign-in sheets indicated that the Claimant had a job interview on January 7 and that his children were sick on January 12. The Claimant provided credible testimony that he was absent on January 13 to attend an interview and began his employment the following week on January 20, 2015. The Claimant reported that his worker advised him he had been “kicked out” of the [REDACTED] class when he called on January 13, 2015, to report that he was hired for employment, so he did not attend on the 14th.

Attending [REDACTED] classes was a short-term goal established to assist the Claimant in reaching the long-term goal of full-time employment as set forth in the PRC and SSP. Because of this, attending an interview for employment would be satisfying the long-term goal of being employed and therefore, should be deemed as a good cause reason for missing the [REDACTED] classes. The [REDACTED] class instructor documented the Claimant’s absence on January 7, 2015, was due to both illness and a job interview. The Claimant provided credible testimony that he was absent on the 13th to attend a job interview with the City of [REDACTED] at which time he advised that he was hired and began full-time employment on January 20, 2015. The Claimant established good cause for missing classes on January 7 and January 13, 2015, in order to attend job interviews. The Department found the Claimant established good cause for missing class on January 12, 2015, due to the illness of his children. The only dates remaining were January 6 and 14. Individual case comments indicate that the Claimant’s worker spoke with him on January 13, 2015, and advised the Claimant he was no longer permitted to participate in the [REDACTED] classes. Because the Claimant had been advised he was no longer in the [REDACTED] classes on the 13th, this is good cause for not attending on the 14th. The only date the Claimant missed without demonstrating good cause was January 6, 2015, a date the Claimant indicated he was sick. However, the Claimant provided no evidence, such as a doctor’s statement, to establish good cause. According to the Claimant’s PRC/SSP, he is afforded one unexcused absence from the [REDACTED] class, the absence on January 6, 2015, would be his one unexcused absence.

The Department’s representative stated that by missing the number of days he did, even had the absences been excused, the Claimant would have been unable to meet the required 85 hours of participation prior to the end of the month. However, because the Claimant was hired by the City of [REDACTED] to work 40 hours per week beginning January 20, 2015, the 85 hours in a job-readiness program would be a moot point.

CONCLUSIONS OF LAW

- 1) The Department failed to establish that the Claimant did not comply with the conditions outlined in his PRC/SSP. Evidence established that the Claimant had good cause for absences occurring on January 7, 12, 13 and 14, 2015. Because the Claimant had only one unexcused absence, January 6, 2015, he was in compliance with the terms and conditions of his PRC/SSP.

- 2) Because the Claimant established good cause for his absences, with the exception of one unexcused absence, the Department was incorrect in applying a third-level sanction and terminating his WV WORKS benefits effective February 1, 2015.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Department's proposal to apply a third-level sanction and terminate the Claimant's WV WORKS cash assistance for a period of three (3) months. Any benefits the Claimant is entitled to receive shall be reinstated as set forth by policy.

ENTERED this _____ day of March 2015.

Donna L. Toler
State Hearing Officer