



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

Karen L. Bowling
Cabinet Secretary

July 22, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1701

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,

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

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

cc: Cindy Palma, WVDHHR

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1701

**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 ██████████. 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 was convened on May 6, 2014, on an appeal filed March 31, 2014.

The matter before the Hearing Officer arises from the January 28, 2015 decision by the Respondent to apply a third sanction and terminate the Claimant's WV WORKS benefits effective March 1, 2015.

At the hearing, the Respondent appeared by Cindy Palma, Family Support Specialist (FSS). The Claimant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Personal Responsibility Contract with assigned activities and begin dates – signed on 12/15/14
- D-3 Participant Time Sheet for January 2015
- D-4 Disability Certificate dated 1/5/15
- D-5 Case Comments dated 1/27/15
- D-6 Notice of Decision – Sanction and Good Cause – dated 1/28/15
- D-7 Notice of Decision – benefit termination effective 3/1/15 – dated 1/28/15
- D-8 WV Income Maintenance Manual §§1.25.T, 13.9, 24.4.E, and 6.3.D

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 completed a WV WORKS Personal Responsibility Contract (PRC) with his case worker, Cindy Palma, on December 15, 2014. Exhibit D-2 reveals that the Grievant agreed to begin attending SPOKES classes on December 22, 2014, attend classes 30 hours per week (120 hours per month) thereafter, and submit a timesheet no later than the 5th day of each month verifying attendance.
- 2) Respondent's representative submitted Exhibit D-3 (Participant Timesheet) which indicates that the Claimant attended SPOKES class a total of six (6) hours and 38 minutes. Respondent indicated that the Claimant was given seven (7) hours for SPOKES participation (rounded up), 16 participation hours for a two (2)-day disability period (D-4) and 16 participation hours for the two (2) federal holidays in January 2015, but when the hours were calculated, his participation only totaled 39 hours in January 2015.
- 3) Exhibit D-5 (Case Comments dated January 27, 2015) reveals the Claimant was reported to be a no show/no call for the remaining days he was required to participate in SPOKES in January 2015, and on January 28, 2015, the Claimant was notified (Exhibits D-6 and D-7) that he was being placed in a third-level (3-month) sanction, that a good cause appointment had been scheduled for him on February 5, 2015, and that he would not be eligible for WV WORKS cash assistance benefits effective March 1, 2015. The sanction was effective for the months of March, April and May 2015.
- 4) The Claimant did not dispute Respondent's evidence specific to his failure to participate in the SPOKES class pursuant to the requirements of his PRC, but indicated that he did not receive notice advising him of the sanction, good cause appointment, or that his WV WORKS benefits would stop effective March 1, 2015. The Claimant reported that he has not experienced any problems receiving his mail at his post office box.
- 5) Respondent proffered testimony to indicate that two adverse notice letters (D-6 and D-7) were sent to the Claimant's post office box in [REDACTED], and neither of the notice letters were returned by the U.S. Postal Service.

APPLICABLE POLICY

Policy found in §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.

West Virginia Income Maintenance Manual §13.9 provides that when a member of the benefit group does not comply with the requirements found on his/her PRC or SSP, a sanction must be imposed unless the worker determines that good cause exists. A third-level sanction results in ineligibility for cash assistance for a period of three (3) months.

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.

DISCUSSION

Policy provides that the PRC is a negotiated contract between the adult or emancipated minor members of the WV WORKS Assistance Group (AG) and the worker. Pursuant to policy, failure, without good cause, to adhere to the responsibilities contained in the PRC results in imposition of a sanction against the benefit group unless good cause exists. A third-level sanction results in ineligibility for cash assistance for a period of three (3) months. The Claimant did not dispute that he failed to comply with his PRC, and while he indicated that he was not notified that his benefits were terminated due to the imposition of a sanction, Respondent sent the Claimant's mail to a secure post office box confirmed by the Claimant, and Respondent's mail was not returned from the post office, as required, when mail is undeliverable.

CONCLUSION OF LAW

Pursuant to policy, the evidence demonstrates the Claimant failed to comply with the requirements of his PRC and he was properly notified that a third-level (3-month) sanction was imposed effective March 2015. As a result, the imposition of a third-level sanction is affirmed.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's action to apply a third-level sanction and terminate the Claimant's WV WORKS cash assistance for a period of three (3) months effective March 1, 2015.

ENTERED this ____ Day of May 2015.

**Thomas E. Arnett
State Hearing Officer**