



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

December 15, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 12, 2011. Your hearing request was based on the decision of the Greater Wheeling Coalition for the Homeless to impose a six-month sanction against your Homeless Program benefits.

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 Homeless Program benefits is based on current policy and regulations. A sanction is a negative action resulting in the temporary withholding of benefits because of client non-compliance with the service plan, violation of Homeless Program policy, or fraud. Sanctions shall be approved by the Adult Service Supervisor prior to imposition. When case management is provided by contract (shelters and/or case management) approval is provided by the director of that shelter. All negative actions are to be in accordance with the procedures practiced by the Department. (WV Department of Health and Human Resources, Social Service Policy Manual, Chapter 8 and 46,000)

Information submitted at your hearing reveals that the [REDACTED] Coalition for the Homeless correctly imposed a six-month sanction against your Homeless Program benefits.

It is the decision of the State Hearing Officer to **uphold** the action of the [REDACTED] Coalition for the Homeless to impose a six-month sanction against your Homeless Program benefits.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
-----, Case Manager, [REDACTED] Coalition for the Homeless.

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

-----,

**Claimant,**

v.

**Action Number: 11-BOR-2198**

**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 via telephone conference call on December 12, 2011 on a timely appeal filed September 30, 2011.

**II. PROGRAM PURPOSE:**

The Homeless Services Program is designed to assist individuals and /or families who are without available shelter and who are without sufficient resources at the time of application or referral to the Department. The intent of this program is to provide temporary assistance until the individual achieves independence or no longer meets the definition of homeless.

**III. PARTICIPANTS:**

-----, Claimant

-----, Case Manager (CM), [REDACTED] Coalition for the Homeless

-----, CM, [REDACTED] Coalition for the Homeless

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 [REDACTED] Coalition for the Homeless was correct in its decision to impose a six-month sanction against the Claimant for non-compliance with shelter rules.

**V. APPLICABLE POLICY:**

West Virginia Department of Health and Human Resources, Social Services Manual, Homeless Services, Chapter 8

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

- Exhibit-1 Homeless Coalition Initial Shelter Guidelines – Initialed and signed on August 23, 2011
- Exhibit-2 Claimant’s Service Plan – Signed on August 17, 2011
- Exhibit-3 Progress Update dated September 13, 2011 and Sanction warning letter
- Exhibit-4 Notice of Shelter Violation dated September 15, 2011, Progress Update dated September 16, 2011 (8:15 a.m.), and Progress Update September 16, 2011 (9:15 a.m.)
- Exhibit-5 Client Notification of Sanction dated September 16, 2011
- Exhibit-6 Progress Update dated September 21, 2011
- Exhibit-7 Progress Update dated September 28, 2011 (3:15 p.m.), Progress Update dated September 28, 2011 (4:45 p.m.), Progress Update dated October 3, 2011 and Grievant’s request for a pre-hearing and hearing before a State Hearing Officer signed on September 30, 2011
- Exhibit-8 Progress Update dated October 24, 2011 (9:15 a.m.), Progress Update dated October 24, 2011 (9:15 a.m.), Progress Update dated October 24, 2011 (9:15 a.m.), Progress Update dated October 24, 2011 (9:30 a.m.), IG-BR-29, Client Notification of Sanction (duplicate of Exhibit-5) and Claimant’s hearing request (duplicate of Exhibit-7)
- Exhibit-9 Progress Update dated September 29, 2011
- Exhibit-10 Progress Update dated October 24, 2011 (11:15 a.m.) and Claimant’s Grievance/Complaint Form dated October 20, 2011
- Exhibit-11 Progress Update dated November 7, 2011 (10:15 a.m.) and Progress Update dated November 7, 2011 (4:15 p.m.)

**VII. FINDINGS OF FACT:**

- 1) The Claimant was admitted to a shelter operated by the Salvation Army on August 12, 2011 and provided a payment voucher by the [REDACTED] Coalition for the Homeless, hereinafter Homeless Coalition.

- 2) A Service Plan (Exhibit-2) was completed (signed by the Claimant on August 17, 2011) and an Initial Shelter Guidelines form (Exhibit-1) was completed on August 23, 2011. By initialing the Initial Shelter Guidelines form, the Claimant acknowledged that he must be accountable for his behavior so that he can keep his bed until goals are accomplished to end his homelessness permanently. Pertinent guidelines noted by -----, the Claimant's Case Manager and Homeless Coalition representative, were cited on the second page of Exhibit-1 and include:

#4. By accepting Homeless Coalition services, you agree to follow all service plans. Failure to not do so shall result in a service suspension for one (1) to six (6) months.

#6. You must obey all shelter rules. Eviction from shelter shall result in service suspension for one (1) to six (6) months. Eviction due to violent behavior will result in a services suspension for one (1) year.

#7. If you are under the influence of drugs or alcohol, you will not be served.

- 3) The Homeless Coalition cited Exhibit-2 (Service Plan) and noted pertinent Goals included in part "A" Obtain and Remain in Permanent Housing - Failure to comply with any of the requirements in this section results in a sanction.

(A1) "You must obey shelter rules, the Coalition's policies and comply with your service plan."

(A2) "Keep all scheduled appointments. Come to your appointment at the scheduled time. If you arrive late the appointment will be rescheduled."

Part "B" of the Service Plan (Achieve Greater Self-Determination) notes in section (B3) – "You are responsible for your actions and decisions. It is your responsibility to abide by state and local laws, being respectful of other shelter residents and staff."

- 4) The Homeless Coalition introduced Exhibit-3 to show that the Claimant failed to appear for a scheduled appointment on September 13, 2011 and that he was provided a sanction warning notice.
- 5) On September 15, 2011, the Homeless Coalition was notified by the Salvation Army (Exhibit-4) that the Claimant was exiting its shelter and placed in a "lifetime sanction" due to a shelter violation. Progress notes included in Exhibit-4 (9/16/11) indicate that a Salvation Army representative (-----) reported that the Claimant was found with marijuana in his possession.
- 6) On September 16, 2011, the Claimant was notified via a Client Notification of Sanction (Exhibit-5) that he was placed in a sanction. This notice states, in pertinent part:

This is to notify you that pursuant to Sections 46,000 of the Social Services manual, you will not be eligible for the Homeless Program benefits for a period of 6 months, beginning September 28, 2011. The reason for this action is your failure to comply with the conditions of your service plan: to-wit:

Section III.I.3 “When the client fails to accept, or abide by, the shelter rules which results in eviction. Client was found with a bag of marijuana.”

- 7) Exhibit-6 (Progress Update on September 21, 2011) was submitted to show that the Claimant spoke with ----- at the Homeless Coalition and reported that he was evicted from the shelter for having oregano. The Claimant acknowledged during this meeting that he had received a bag from a friend and that he gave it to the shelter manager who evicted him. The Claimant also reported that he heard the police were called and they informed the Salvation Army the bag contained a mixture of oregano and marijuana, but he contended that he did not have an illegal substance in his possession and should not have been evicted from the shelter.
- 8) Information included in Exhibit-7 reveals that a pre-hearing conference was scheduled with the Homeless Coalition’s Executive Director, -----, on September 27, 2011, but the Claimant did not appear for the scheduled appointment. Additional Progress Update notes indicate the Claimant returned to the Homeless Coalition and was again advised that he was sanctioned for failing to abide by shelter rules and that he could only dispute the possession of illegal substance issue with -----, the shelter director at the Salvation Army. The Claimant inquired if he could have a bus pass next month and be considered for the Transitional Housing Program, but was advised that he would be ineligible until the sanction period expired.
- 9) ----- noted that she spoke with -----at the Salvation Army (Exhibit-9) and she reported that the Claimant “purchased” a bag of marijuana for a pack of cigarettes on Salvation Army property in front of two shelter managers. The bag was confiscated and police were called to escort the Claimant off the property. It was reported to -----that law enforcement determined the bag contained a small amount of marijuana and oregano. It was reported to -----that when the Claimant found out the marijuana was mixed with oregano, he assaulted the individual he made the purchase from and two other Salvation Army residents separated the two before police were called.
- 10) ----- testified that the sanction is imposed for a period of six (6) months because this is the Claimant’s second sanction through the Homeless Program.
- 11) The Claimant contends that he was handed a bag with a substance in it and he just placed it in his pocket. He contends that it was only oregano and he disputes that he assaulted the individual who gave it to him. The Claimant further contends that he voluntarily gave the substance to the shelter guard and that he has done nothing wrong.
- 12) West Virginia Department of Health and Human Resources, Social Services Manual, Chapter 8 (Homeless Services, Effective November 1, 2007), Section 5.7 (Sanctions) – found at [http://www.wvdhhr.org/bcf/children\\_adult/homeless/policy/Homeless\\_Services.pdf](http://www.wvdhhr.org/bcf/children_adult/homeless/policy/Homeless_Services.pdf) - states as follows:

A sanction is a negative action resulting in the temporary withholding of benefits because of client non-compliance with the service plan, violation of Homeless policy, or fraud. Sanctions shall be approved by the Adult Service Supervisor prior to imposition. When case management is provided by contract (shelters and/or case management) approval is provided by the Director of that Shelter.

All negative actions are to be in accordance with the procedures practiced by the Department including the right of clients to have thirteen (13) days in which to appeal the action. Sanctions, case closure or any negative action, other than the denial of an application, may not take effect until expiration of the thirteen (13) day notice. If an appeal is requested by the client the allocation and benefits are to continue until the hearing decision is rendered.

**Note:** A client whose case has been closed may re-apply for benefits at any time. A client, against whom negative action (sanction) has been imposed, shall not be eligible for benefits until the sanction period has ended.

**a) Imposed Sanctions:**

In order to be reasonable and prudent in the delivery of services, a sanction shall be imposed:

1. When non-compliance with the service plan occurs without good cause, and/or;
2. When a client loses access to housing/shelter as a result of inappropriate, violent, threatening behavior or not participating in the savings program, and/or;
3. When the client fails to accept, or abide by, the shelter rules which results in eviction (not minor infractions), and/or;
4. When the client receives or attempts to receive benefits fraudulently.

If a sanction is imposed because the client fails to comply with the conditions of the service plan, not resulting in eviction, the sanction will become effective beginning at the start of the next rental period.

During the sanction period the Social Worker will continue with the service plan if the client chooses, in an effort to resolve the problem that led to the sanction.

If a sanction is imposed on a client, and there are children in the benefit group, and the worker has reason to believe the children may be at risk, a report must be made to Child Protective Services.

**b) Sanctions Shall Be Imposed as Follows:**

1. The first sanction period shall be one (1) month.
2. The second sanction period shall be six (6) months.
3. Any subsequent non-compliance shall be for twelve (12) months.

Note: If a client loses access to housing/shelter as a result of violent behavior, or if fraud is used to receive benefits, the sanction period shall be twelve (12) months.

**c) Notification of Sanctions**

**1. Client Notification**

The client will be notified in writing of any imposed sanction, the effective date and the period of sanction. The SS-HP-2 is to be used for this purpose. If possible, the client is to be given the notification of sanction immediately. Otherwise, the notification must be mailed to the client's last known address.

**2. Landlord Notification**

If appropriate, the landlord shall be notified in writing of the client's sanction and also if the sanction is withdrawn and benefits restored. The SS-HP-3 is to be used for this purpose.

**3. Post Sanction Services**

Following a sanction period the client may request to continue services. If the need for services still exists, the client and Social Worker/Shelter Staff will develop a service plan taking into consideration any changes in the client's situation and the reason for the initial sanction. If the client refuses to agree to the service plan, the request for continued homeless services may be denied, and an additional sanction may be imposed or the case may be closed. November 1, 2007 - 43 - Social Services Homeless Services Manual Chapter 46,000

**VIII. CONCLUSIONS OF LAW:**

- 1) Pursuant to the West Virginia Department of Health and Human Resources, Social Services Policy Manual, Chapter 8 and 46,000, and the Homeless Coalition's Shelter Guidelines and Service Plan, a sanction is imposed against a resident when the resident fails to accept, or abide by, the shelter rules which results in eviction - The first sanction period shall be one (1) month, the second sanction period shall be six (6) months, and any subsequent non-compliance sanctions shall be for 12 months.
- 2) The Claimant's contention that he should not have been evicted from the shelter because the bag contained oregano simply has no merit. Furthermore, the Claimant's statement that he "just took the bag and put it in his pocket" is unconvincing. The evidence demonstrates that the Claimant was evicted from the Salvation Army shelter for a violation of shelter rules - possession of a controlled substance. As a result, the Homeless Coalition was correct to apply a six-month sanction against the Claimant.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Homeless Coalition to apply a six-month sanction against the Claimant's Homeless Program benefits.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of December, 2011.**

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**Thomas E. Arnett  
State Hearing Officer**