



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 20, 2007

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 16, 2007. Your hearing request was based on the decision of [REDACTED] Coalition for the Homeless to apply a one (1) month (30-day) sanction for non-compliance with your Service Plan.

In arriving at a decision, the State Hearings 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 Homeless Program is based on current policy and regulations. Some of these regulations state that sanctions are imposed when non-compliance with the service plan occurs without good cause or when the client fails to accept, or abide by, the shelter rules which results in eviction. Negative actions are to be in accordance with the procedures practiced by the Department and must meet adequate and timely requirements. [WV DHHR Social Service Manual (Homeless Services) §33600 & WV DHHR Common Chapters Manual §750]

The information submitted at your hearing reveals that while you failed to comply with the terms and conditions of your Service Plan, the notice of Sanction provided to you fails to meet the Department's "adequate and timely" notification requirements. Additionally, benefits were incorrectly reinstated and will stop upon receipt of this decision. The Claimant may reapply for Homeless services at her earliest convenience as the sanction cannot be imposed.

It is the decision of the State Hearings Officer to **reverse** the proposal of the Homeless Coalition to apply a one (1) month sanction. Please see Section VIII for additional information.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Kim Knight, Homeless Coalition

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

____,

Claimant,

v.

Action Number: 07-BOR-751

**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 concluded on February 20, 2007 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 February 16, 2007 on a timely appeal filed January 16, 2007.

II. PROGRAM PURPOSE:

The Program entitled Homeless Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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

Kim Knight, 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. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Homeless Coalition was correct in its decision to propose a one (1) month sanction against the Claimant for non-compliance with her Service Plan.

V. APPLICABLE POLICY:

WV DHHR Social Service Manual, Homeless Services, Chapter §§33422, 33610 & 33620
WV DHHR Common Chapters Manual §700

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Homeless Coalition Exhibits:

HC-1 Summary of events from 11/16/06 to 1/3/07

HC-2 Service Plan signed on 12/29/06

HC-3a Client Notification of Sanction dated 1/3/07

HC-3b Landlord Notification of Client Sanction dated 1/3/07

VII. FINDINGS OF FACT:

- 1) On December 29, 2006, the Claimant was evaluated for financial assistance with shelter costs through the Homeless Program (See Exhibit HC-1). The Worker at [REDACTED] Coalition for the Homeless, Inc., hereinafter Homeless Coalition, verified the Claimant's monthly income and determined that she exceeds the maximum allowable income. A Service Plan (Exhibit HC-2) was completed and an appointment was scheduled for the Claimant to be reevaluated on 1/3/07.
- 2) The Claimant was a no show / no call for her 1/3/07 appointment and the Worker issued a one (1) month sanction. Exhibits HC-3a indicates the Sanction will begin effective 1/3/07, cites policy 33610.2 and states - "Non compliance with your Service Plan without good cause. You missed your appointment on 1/3/07."
- 3) The Claimant filed a written appeal to contest the Homeless Coalition's action on January 16, 2007 and benefits (assistance with payment of homeless shelter costs) were reinstated.
- 4) Exhibit HC-2 (Service Plan) was cited by the Homeless Coalition's representative as the reason the proposed one (1) month sanction was initiated. Goal A2 states – "Keep all scheduled appointments. Coalition staff must meet with you at least every 2 weeks, if you cannot make an appt. you must reschedule for that same week unless Coalition staff cannot accommodate the appointment."

The Homeless Coalition's representative purports that while the Claimant was not being provided financial assistance with shelter costs, she was being provided Case Management Services, and this is why the Sanction was proposed.

- 5) As a matter of record, the Claimant acknowledged that she missed her appointment scheduled on January 3, 2007 and she did not provide good cause for failing to attend or reschedule.
- 6) WV DHHR Social Service Manual (Homeless Services) §33,422 - *The Service Plan*:
The purpose of the service plan is to allow the case manager and client to identify and document client needs and problems that contribute to the client's homelessness or inability to become self-supporting. The plan should also document the specific tasks the client is to achieve to alleviate those problems.
- 7) WV DHHR Social Service Manual (Homeless Services) §33600 states, in pertinent part: A sanction is a negative action resulting in temporary withholding of all benefits because of client non-compliance with the services plan, violation of Homeless policy, or fraud.

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 [emphasis added], may not take effect until the hearing (if an appeal was requested by the client) has validated the action and benefits are to continue, if requested, until the hearing decision.

- 8) WV DHHR Social Service Manual (Homeless Services) §33610 (*When Sanctions Are Imposed*):
When Sanctions Are Imposed - In order to be reasonable and prudent in the delivery of services, a sanction shall be imposed:

(2) When non-compliance with the service plan occurs without good cause.

- 9) WV DHHR Social Service Manual (Homeless Services) §33,620 (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.
- 10) WV DHHR Common Chapters Manual, §750 (A), provides Department requirements for Adequate and Timely Client or Recipient of Services Notification of Department Decisions. Among the "Adequate Notice" requirements is (A.2) "The Reasons(s) for the action given in terms the client or recipient of services can readily understand specifying all applicable policy manual sections."
- 11) WV DHHR Common Chapters Manual, §750 (B), *Timely Notice Requirement* states – "Timely notice means that a decision notice shall be mailed at least 13 days before the effective date of any action or decision which may be adverse to the client or recipient of services. This time period is provided to insure that the client or recipient of services has an opportunity to request a hearing prior to the loss of benefits or services."

- 12) WV DHHR Common Chapters Manual, §780.D.1 states that if the policy was misapplied or other incorrect decision was made, the State Hearing Officer will reverse.

VIII. CONCLUSIONS OF LAW:

- 1) The policy that governs the Homeless Program states that sanctions are imposed when non-compliance with the Service Plan occurs without good cause.
- 2) The evidence reveals that the Claimant failed to appear or reschedule her January 3, 2007 appointment at the Homeless Coalition, however, this case should have been nothing more than an application denial. Homeless benefits were denied due to the Claimant's financial ineligibility on December 29, 2006 and should not have been reinstated pending a hearing decision. Policy states specifically that benefits do not continue if the client or recipient of services appeals a denied application. Based on this evidence, the Claimant was not financially eligible for assistance with shelter cost and the incorrectly reinstated benefits will stop upon receipt of this decision.
- 3) With regard to the proposed Sanction, all negative actions issued by the Homeless Program are to be applied in accordance with the procedures practiced by the Department. The January 3, 2007 Client Notice of Sanction fails to meet "Adequate and Timely" notification requirements. The citing of policy number 33610.2 does not provide a policy manual where the policy can be located by the Claimant (not adequate) and the Claimant was not provided 13-days advance notice of the adverse action (not timely).
- 4) Whereas policy was misapplied, the Homeless Coalition's proposed Sanction is therefore reversed. Because the Sanction cannot be applied, the Sanction will be removed from the Claimant's record and the Claimant can reapply for Homeless benefits at her earliest convenience.

IX. DECISION:

It is the decision of the State Hearing Office to **reverse** the proposal of the Homeless Coalition to apply a 1-month (30-day) Sanction. The Sanction will be removed from the Claimant's record and she is eligible to reapply for Homeless benefits at her earliest convenience.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of February, 2007.

**Thomas E. Arnett
State Hearing Officer**