



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of Inspector General
Board of Review
State Capitol Complex Bld. 6 Rm. 817-B
Charleston, WV 25305

Bob Wise
Governor

Paul L. Nusbaum
Secretary

January 5, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 11, 2004. Your hearing request was based on the Department of Health and Human Resources' proposed action to close your benefits under the West Virginia Works Program based on information received which indicated that your only child was not residing with you.

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 West Virginia Works Program is based on current policy and regulations. Some of these regulations state as follows: When a member of the benefit group does not comply with the requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless it is determined that good cause exists. For a third offense and all subsequent offenses the sanction consists of ineligibility for cash assistance for three months or until compliance, whichever is later. (West Virginia Income Maintenance Manual § 13.9)

The information which was submitted at the hearing revealed that your son does reside with you however he does spend two to three nights per week with his Grandmother and is dropped off at her house in the mornings to be walked to school.

It is the decision of the State Hearing Officer to **reverse** the proposal of the Agency to apply a third sanction and subsequent closure as set forth in the December 12, 2003 notification.

Sincerely,

Erika Young
State Hearing Officer
Member, State Board of Review

cc: Chairman of Board of Review
Mary Ford, DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 4, 2005 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 originally convened on March 11, 2004 on a timely appeal filed December 23, 2003.

It should be noted, that benefits under the West Virginia Works Program had been continued during this hearing process.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled **WV Works** is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

WV WORKS was created by Senate Bill 140 Article 9 of the West Virginia Code and the Temporary Assistance to Needy Families Block Grant, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193). The purpose of WV Works is to provide assistance to needy families with children so they can be cared for in their own home, reduce dependency by promoting job preparation, work and marriage.

III. PARTICIPANTS:

Claimants' Witnesses:

_____, Claimant
_____, Claimant's mother
_____, Child's Father

Departments' Witnesses:

Mary Ford, DHHR Family Support Specialist
Kristen Showalter, Social Service Worker
Jason Prettyman, Social Service Worker

Section III. (Continued)

Presiding at the hearing was Erika Young, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in their proposal to impose a Third Sanction and subsequent closure of the claimant's West Virginia Works case.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section # **1.25, 13.9, 13.10 and 9.21**

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Departments' Exhibits:

- D-1 Notification letters dated 12/12/03
- D-2 WV Works- Policy #9.21
- D-3 Personal Responsibility Contract, (PRC)

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

- (1) Claimant was an active recipient of WV Works for herself and one son,_____.
- (2) On December 18, 2003 a Child Protective Service, (CPS) referral was being investigated regarding _____. The referent gave the child's Grandmother's address as the address to find the child and to complete the referral. When the CPS workers, Ms. Showalter and Mr. Prettyman, visited the Grandmother, _____'s home, they did find _____ at the home.
- (3) Ms. Showalter testified that _____ told them that _____ stays with her and goes to school from her house and that he would go stay with his mother on the weekends.
- (4) Based on the information received from the referent, the Family Support Worker applied a Sanction to the claimant's case and proposed closure of the WV Works case. It was believed that the Son had moved from _____'s home and into _____'s home and that _____ violated

her Personal Responsibility Contract in not reporting changes in her life situation.

Section VII. (Continued)

- (5) A notice of the sanction and closure were mailed to the claimant on December 12, 2003 which was prior to any further information gathered by the CPS workers. The claimant called her case worker as a result of receiving the notice. She told the case worker that her son does live with her and doesn't live with his grandmother. The claimant asked for a hearing before the closure of her case.
- (6) Ms. Showalter testified that _____ told them that _____ stays with her and goes to school from her house and that he would go stay with his mother on the weekends.
- (7) The claimant states that her son does go to school from his grandmother's house, but most mornings he is dropped off at her house so he can be walked to school with other neighborhood children. She admits that he does spend two to three nights a week with his grandmother. He has a strong bond with his grandmother because the 1st five years of his life, he did live in his grandmother house with his mother and grandmother. She and her son moved out on their own just one year ago. The claimant states that she has not had a drivers license and sometimes would know that she would not have a ride for her son to get him to his grandmother's house to be walked to school. On these times, she would have him spend the night with his grandmother so he would be there in the morning for school.
- (8) _____, the child's grandmother, offered testimony that the child does not stay at her house all the time. She says that he does go to school, from her house, every day and is returned to her house from school every day, but only spends a couple nights a week at her house. She states, "He's at home most of the time."
- (9) Mr. _____ testified that his son lives with his mother, _____, and sometimes will stay with his grandmother. He states that his son will sometimes spend the night with him at his house.
- (10) West Virginia Income Maintenance Manual # 1.25 (T):
Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature results in imposition of a sanction against the benefit group. On the PRC - Part 1, The client's signature indicates that he understands and accepts the responsibility inherent in the Program. The Worker's signature indicates that he has explained the clients' rights and responsibilities and the Department's responsibilities to the client. It also indicates that the worker has addressed all of the client's questions and concerns before requesting him to sign it. Failure, without good cause, to adhere to the responsibilities or any tasks listed on the (PRC) after signature, results in imposition of a sanction against the

benefit group.

Section VII. (Continued)

West Virginia Income Maintenance Manual # 13.9:

When a member of the benefit group does not comply with the requirements found on his PRC, 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 or until compliance, whichever is later. After the second sanction is imposed, the worker must make a home visit.

(11) West Virginia Income Maintenance Manual # 13.10:

The client has good cause for failure to participate when:

- The parent or included non-parent caretaker quits employment or fails to participate in his assigned activity due to enrollment and full-time attendance in school, training or an institution of higher learning. College is defined as a 2- or 4-year undergraduate degree program.
- A single parent can prove that appropriate child care is unavailable for his child, age six or younger.
- He is required to appear in court or for Jury duty.
- He is experiencing a family crisis such as, but not limited to:
 - Death of his spouse, parent, child or stepchild.
 - A life-threatening illness of a spouse, parent or child requires the client's immediate attention.
 - Domestic violence and/or the need to protect abused children makes participation impossible, dangerous or embarrassing and the client accepts a referral to Social Services or a Domestic Violence center for assistance.
 - The minimum suitability standards for the specific activity are not met.
 - Based on knowledge of the client and his life circumstances, the Worker determines that the client has not met the requirement, but has complied to the best of his ability, understanding of the requirement.
 - He would be required to travel more than one hour round trip to participate, unless it can be shown that local community travel standards exceed the one-hour limitation.

(14) West Virginia Income Maintenance Manual # 9.21:

WV Works Eligibility Determination Groups

1. Who Must Be Included

All minor, dependent, blood-related and adoptive siblings who live

in the same household and are otherwise eligible.

VIII. DECISION:

Policy is clear in that the program, WV WORKS, is for assistance to needy families with children so that they can be cared for in their own home. A household without children residing in it, would not be eligible for this benefit. The claimant did sign her PRC dated November 7, 2003 which made her aware of her responsibility to report changes in her life situation.

The evidence and testimony presented at the hearing did not support the allegations that _____ does not reside, with his mother. This Hearing Officer is convinced that this child does have a close bond with his Grandmother and does spend ample time at his Grandmother's house. This fact was not contested by the claimant or her witnesses. It is determined that the child does spend most nights in his mother's home. The Agency based their determination to apply a sanction on information received from an unknown CPS referent, and failed to give any credibility to the objections made by this claimant following the closure letter. Based on the information gathered at this hearing, it is the decision of the State Hearing Officer to reverse the Department on their action set forth in the December 12, 2003 notification to close this WV Works case based on information that the child was not residing in the home.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

