



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

January 19, 2005



Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 13, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the West Virginia Works Program based on the application of a third program sanction.

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 that 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 AG. For a third and all subsequent offenses the sanction consists of ineligibility for cash assistance for 3 months or until compliance, whichever is later. (West Virginia Income Maintenance Manual § 1.25 & 13.9)

The information submitted by the Department failed to include a signed Personal Responsibility Contract.

It is the decision of the State Hearing Officer to **reverse** the action of the Agency in applying a third (3rd) sanction to your WV WORKS benefits.

Sincerely,

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

cc: Chairman, Board of Review
Donna White, FSS, 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 19, 2005 for [REDACTED]. 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 December 13, 2004 on a timely appeal filed October 21, 2004.

It should be noted that benefits were continued pending the results of the hearing.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The program entitled West Virginia 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:

[REDACTED] Claimant
Donna White, FSS, DHHR
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 the Agency was correct in their proposal to impose a 3rd Sanction in the Claimant's West Virginia Works case.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section § 1.25, 13.9, 13.10.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Orientation to WV WORKS, signed by the Claimant on 5/29/03.
- D-2 WVIMM 24.3, 13.9 and 13.10.
- D-3 Notice of Sanction dated 10/21/04.
- D-4 OFS-TS-12, Office of Family Support Participant Time Sheet for August 2004.
- D-5 OFS-TS-12, Office of Family Support Participant Time Sheet for September 2004 & a note from [REDACTED], M.D.

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

1. The Claimant was notified in a letter dated October 21, 2004 (D-3) that a third (3rd) sanction was being applied to her WV Works case. The notice states, in pertinent part:

A Personal Responsibility Contract (PRC) sanction has been applied to your cash assistance group effective 11/01/04. This is the third sanction applied to your cash assistance group and will continue for 3 months. We are still awaiting a Fair Hearing Decision on your 2nd sanction (held 2/27/04).

This sanction is being applied due to the failure of [REDACTED] to comply with the terms of the Personal Responsibility by not meeting her work requirement of 20 hours per week."

We have scheduled a good cause interview for [REDACTED] on 10/15/04, Friday at 10:00 AM.

2. The Department submitted exhibits D-1, Orientation to WV WORKS to verify that the Claimant was aware that she was required to work an average of at least 20-hours per week.
3. Exhibit D-4, Participant time sheets for August and September 2004, was provided to verify that the Claimant has failed to participate in her current placement an average of 20-hours per week in each of those months.
4. The Claimant attended her good cause appointment on 10/15/04 and indicated that she was having difficult meeting the weekly 20-hour work requirement due to her pregnancy. She was advised to get a statement from her physician to verify this claim.
5. Exhibit D-5, a note from [REDACTED], M.D., was provided by the Claimant in effort to establish "good cause" for failing to meet the required 20-hours of work participation in August and September 2004. This document, dated October 18, 2004, received by the Department on October 19, 2004, states – "I have recommended that [REDACTED] only work 15 hours per week between now and delivery." This document would only reduce work requirements effective October 2004 and it fails to provide "good cause" for not complying with the 20-hour work requirement in August and September 2004.
6. Testimony offered by the Department indicates that the proposed second (2nd) sanction cited in the notification letter was upheld by the Erika Young, State Hearing Examiner, and that this sanction would be a third level sanction.
7. The Department was unable to locate the signed PRC from which the non-compliance sanction originated and offered the OFA-WVW-4, Orientation to WV WORKS, to support a sanction for not meeting the 20-hour per week work participation requirement.
8. Policy found in Chapter 1.25, T, 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 or any tasks listed on the PRC after signature [emphasis added], results in imposition of a sanction against the AG.

9. 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.
10. West Virginia Income Maintenance Manual § 13.10 sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract.

VIII. DECISION:

Policy provides that a PRC is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG and the Worker. Policy goes on to say that a PRC sanction may only be imposed after the individual has signed their PRC. Whereas the Department failed to provide a signed PRC agreement requiring 20-hours of work participation by the Claimant, a third (3rd) sanction cannot be applied.

It is therefore the decision of the State Hearing Examiner to **reverse** the Agency's proposal to apply a third (3rd) sanction to your WV Works case.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29