



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 27, 2005

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 22, 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 (3rd) 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 when a member of the benefit group does not comply with the requirements found on his or her Personal Responsibility Contract (PRC), 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 3 months or until compliance, whichever is later. Once a sanction has been imposed, it cannot be stopped until the appropriate action is taken or the appropriate time has elapsed, whichever is later. (West Virginia Income Maintenance Manual § 13.9)

The information submitted at the hearing reveals that while you attended your November 8, 2004 Good Cause Interview, you failed to establish good cause for not participating in your work assignment as agreed to in your May 19, 2004 PRC.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency in applying a third (3rd) sanction to your WV WORKS benefits. The third (3rd) sanction will be imposed effective March 1, 2005.

Sincerely,

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

cc: Chairman, Board of Review
Mary Dean, 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 27, 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 22, 2004 on a timely appeal filed November 8, 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
[REDACTED] Claimant's mother
[REDACTED] Claimant's fiancé

Mary Dean, 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:

Department's exhibits

- A. Orientation to WV WORKS, signed by the Claimant on 4/14/04.
- B. Personal Responsibility Contracts signed 4/16/04 and 5/19/04.
- C. Correspondence dated 9/14/04 advising of work activity.
- D&E. Case Comments from 6/8/04 to 10/28/04.
- F. Notice of Decision dated 8/9/04 – first (1st) sanction notice.
- G. WVIMM (Policy Manual), 1.25, 13.9 & 24.4.
- H. Notice of Decision dated 9/28/04 – second (2nd) sanction notice.
- I. Notice of Decision dated 10/26/04 – third (3rd) sanction notice.
- J. Correspondence from [REDACTED], M.D. dated 11/4/04.

Claimant's exhibit

- C-1 Note on RX pad from [REDACTED], M.D., dated 12/22/04.

VII. FINDINGS OF FACT CONCLUSIONS OF LAW:

1. The Claimant was notified in a letter dated October 26, 2004 (exhibit I) that a third (3rd) sanction was being applied to her WV Works case. The notice states, in pertinent part:

Your WV WORKS will stop. You will not receive this benefit after November 2004.

A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

This notice goes on to say that a Good Cause interview for [REDACTED] [REDACTED] was scheduled on 11/8/04 at 10:30.

2. In support of imposing a third sanction, the Department cited exhibits A (Orientation to WV WORKS), and exhibit-B (WV WORKS Personal Responsibility Contracts dated 4/16/04 & 5/19/04). These exhibits show that the Claimant was familiar with the work requirement, and by signing her Personal Responsibility Contract, hereinafter PRC, she agreed to would work 20-hours per week in a job placement.
3. Exhibit-C, correspondence dated September 14, 2004, advises the Claimant that she is to start a work activity at the [REDACTED] on Monday, September 20 at 9:00 a.m.
4. Case Comments found in exhibit-E reveals that the Claimant advised her Worker on October 20, 2004 that she did not go to the [REDACTED] last month (9/14/04) because she forgot. She advised her Worker that she has a hard time remembering appointments. A new start date of October 25, 2004 at 9:15 a.m. was arranged with the [REDACTED] and the Claimant.
5. Case Comments in exhibit-D, dated October 25, 2004, reflect a notation indicating that the Claimant was to start her work activity at the [REDACTED] today. "Per phone call to [REDACTED] there, [REDACTED] Did not show up." "Sanction imposed with good cause set for Nov. 8 at 10:30."
6. The Claimant attended her Good Cause Interview on November 8, 2004, and submitted exhibit-J, correspondence from [REDACTED], M.D. in effort to establish "good cause." This letter states – "This letter is in regards [sic] to my patient [REDACTED] [REDACTED] [REDACTED] Because of her having renal stones and abdominal discomfort from them, I feel she cannot work over eight hours per work day."
7. The Department contends that they were only asking the Claimant to participate in a work activity an average of 5-hours per day and that this does not establish "good cause" for the Claimant's failure to participate in the assigned work activity.

8. The Claimant submitted exhibit C-1 at the hearing to further her claim that she was ill during the time in question and unable to work. Exhibit C-1, a note on a prescription (Rx) pad dated 12/22/04 from [REDACTED] M.D., indicates that [REDACTED] "Was under our care in November and had surgery Nov. 9."
9. [REDACTED] the Claimant's mother, testified that he daughter was ill during this period and they didn't know what was wrong with her. She contends that her daughter was ill from August 2004 until she had her surgery.
10. The Claimant testified that she was not aware that she was going to have surgery on November 9, 2004 when she appeared for the Good Cause Interview on November 8, 2004. She stated that she did not appear at the [REDACTED] to participate in work requirements due to a combination of being sick and not remembering.
11. 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 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.
12. 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.
13. West Virgin Income Maintenance Manual § 13.9 (D) states that once a sanction has been imposed, it cannot be stopped until the appropriate action is taken or the appropriate time has elapsed, whichever is later.
14. 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:

The Claimant failed to comply with the agreements found in her May 19, 2004 Personal Responsibility Contract and the documentation submitted at her Good Cause Interview did not establish "good cause" for non-compliance.

It is therefore the decision of the State Hearing Officer to **uphold** the Agency's proposal to apply a third (3rd) sanction to your WV Works case. The third (3rd) sanction will be imposed effective March 1, 2005.

IX. RIGHT OF APPEAL:

See Attachment

X. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29