

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 February 16, 2005 for [REDACTED] [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 convened on February 16, 2005 on a timely appeal, filed December 21, 2005. It should be noted that this hearing was originally scheduled for February 10, 2005 but was rescheduled to February 16, 2005 due to inclement weather.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

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

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.

WV Works will expect and assist parents and caretaker-relatives in at-risk families to support their dependent children. Every parent who receives cash assistance has a responsibility to participate in an activity to help prepare for, obtain and maintain gainful employment. WV Works will promote the value and the capabilities of individuals.

The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependency on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

[REDACTED] Claimant
[REDACTED] Claimant
Marcia Waselchalk, Department Hearing Representative

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department is correct in applying a sanction because the claimants did not comply with the terms of their Personal Responsibility Contract and did not show good cause for not doing so.

V. APPLICABLE POLICY:

Section 1.25T of the West Virginia Income Maintenance Manual reads in part:

The Personal Responsibility Contract (PRC), form OFA-PRC-1, is negotiated contract between the adult or emancipated minor members of the WV WORKS AG and the Worker as the representative of the Department. There are 2 parts to the form and each serves a different purpose. Refusal or other failure, without good cause, to sign either part of the form results in ineligibility for the entire AG. Completion and signature of both parts of the form are required prior to approving the WV WORKS AG.

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. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred.

PRC - Part 1

Part 1 of the PRC is the same for all clients. It states the purpose of the WV Works Program and lists the client=s rights and responsibilities. Each adult and emancipated minor AG member must sign Part 1 of his own PRC. In addition, the worker must sign the form as the Department=s representative. 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 client=s 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.

PRC - Part 2

Part 2 of the PRC is specific to each individual and is the Self Sufficiency Plan. It lists the goals as well as the tasks necessary to accomplish the goals, including specific appointments, assignments, or activities for the adult/emancipated minor. In addition, Part 2, identifies the circumstances which impede attainment of the established goals and specifies the services needed to overcome the impediments.

The client must initial each change to the Self-Sufficiency Plan when it is made on the paper form. His initials indicate his agreement to the revisions.

The Self-Sufficiency Plan is a negotiated contract between the Department and the client. Even though it must be completed prior to the approval of the case, it is a working document and revisions are made when either the client or the Worker believes it is necessary. Frequent changes are expected as the client progresses toward his goal.

Section 13.9 of the West Virginia Income Maintenance Manual reads in part:

When a member of the benefit group does not comply with requirements found on his PRC, a sanction must be imposed unless the worker determines that good cause exists.

DEFINITION OF SANCTION

Sanctions are applied to WV Works cases in the form of check reductions and for the 3rd or subsequent offense, termination of benefits. The amount of the check reduction is a fixed amount and is determined as follows:

1st Offense = 1/3 reduction in the check amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months

2nd Offense = 2/3 reduction in the check amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months. If the case is in a 1/3 reduction when the 2nd sanction is applied, the 2/3 reduction is applied to the check amount the client is currently eligible to receive, prior to recoupment; it is not applied to the check amount which has already been reduced by 1/3.

3rd Offense and all subsequent offenses = Ineligibility for cash assistance for 3 months or until compliance, whichever is later.

All benefit reductions due to imposition of a sanction require advance notice. unless the client shows good cause for non-compliance, the sanction is imposed. This is true even if the client complies after the notice is sent but before the sanction is effective.

Once a reduction in benefits or ineligibility is imposed, i.e., after expiration of the advance notice period, the reduction or ineligibility remains in effect for the pre-determined number of months, regardless of case status.

Section 13.10 of the West Virginia Income Maintenance Manual reads in part:

If a parent or other caretaker relative included in the payment quits or refuses employment within the 30 day period prior to the date of application or when the client fails or refuses to meet his work requirements and/or adhere to his PRC requirements, the worker must determine the reason for such failure or refusal.

Failure or refusal without good cause results in imposition of a sanction. When the worker discovers the failure or refusal, a notice of adverse action must be issued.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period. Once a sanction has been imposed it cannot be stopped until the appropriate time has elapsed or the appropriate action is taken, whichever is later.

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 in school, training or an institution of higher learning. College is defined as a 2- or 4 year undergraduate degree program.
- S A single parent can prove that appropriate child care is unavailable for his child, age 6 or younger.
- S He is required to appear in court or for jury duty.
- S He is experiencing a family crisis such as:
 - ! 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 a 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, understanding of the sanction process and/or level of motivation. The worker has considerable discretion in imposing a sanction. The worker may determine that the requirement was inappropriate based upon additional assessment. In addition, the worker may determine that not applying a sanction in a particular situation provides more motivation for future participation than the imposition of a sanction.
- S A requirement of Social Services precludes participation for a specified period of time.
- S He refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.
- S He would be required to travel more than one hour each way to participate, unless it can be shown that local community standards exceed the one-hour limitation.

All good cause determinations must be recorded in RAPIDS. The recording must include the reason the worker did not or did impose a sanction.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

- Exhibit D-1) Copy of Form IM-FH-1, Request for Hearing
- Exhibit D-2) Copy of Form IG-BR-40, Hearing Appointment Date
- Exhibit D-3) Copy of DHHR Form, IG-BR-29 Hearing/Grievance Record Information
- Exhibit D-4) Copy of WR-IM-N, Sanction Notice
- Exhibit D-5) Copy of Personal Responsibility Contract for [REDACTED]
- Exhibit D-6) Copy of Case Narrative, Eligibility
- Exhibit D-7) Copy of Case Comments, Work Program
- Exhibit D-8) Policy from Income Maintenance Manual Chapter 13.9
- Exhibit D-9) Department's Summary

Claimants' Exhibits:

- Exhibit C-1) Medical Report for [REDACTED]
- Exhibit C-2) Medical Reports for [REDACTED]

VII. FINDINGS OF FACT:

- 1) The claimants were notified in a letter dated 12/09/04 (Exhibit D-4) that WV Works would stop effective December 2004. Reason: A third-level sanction was being applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

A sanction was being applied to [REDACTED] and [REDACTED] for failure to complete an assignment. A good cause interview was scheduled for both on 12/21/04.

- 2) The household is considered to be a two parent household and required to participate 35 hours per week in an assigned activity.
- 3) [REDACTED] was to attend Adult Basic Education classes for 9 hours a week and [REDACTED] was to commit 26 hours a week in community service activity, which is arranged for him to do through the [REDACTED] Library. He was also to participate in job search for 5 hours a week. [REDACTED] is attending college 9 hours a week but as is not a full time student, cannot use this attendance as hours participating in a work activity.
- 4) [REDACTED] and [REDACTED] signed Personal Responsibility Contracts agreeing to do the above activities. (Exhibit D-5)

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- 5) Ms. Waselchalk testified that she did not receive time sheets for either parent by the 5th working day in December nor did the claimants contact her in any way. She spoke with "[REDACTED]" at the "[REDACTED]" Library on 12/20/04. He stated "[REDACTED]" and "[REDACTED]" had completed 18 hours in November but that he had not seen or heard from them in December.
- 6) A good cause appointment was scheduled for 12/21/04 at 9:30 a.m. Ms. Waselchalk testified that the claimants did not show or call. However, a hearing request with continued benefits was stamped into the office on 12/21/04. (Exhibit D-1)
- 7) "[REDACTED]" testified they never did receive any kind of letter that they had a good cause appointment on 12/21/04. When they came into the office on 12/21/04, they were told all of their "stuff" had been cancelled and that is when they signed the hearing request. He did not know they had an appointment.
- 8) "[REDACTED]" testified that the address on the letter was correct. (Exhibit D-4) The only letter he received was the one that had information in it about the sanctions.
- 9) "[REDACTED]" testified that during this time he and his wife were going to the doctor every day. "[REDACTED]" has had two surgeries for malignant melanoma. They don't know how many more surgeries she will have to have.
- 10) "[REDACTED]" testified that he was having a lot of problems because he was not wanting to go. He doesn't want to be around people. At the time the sanctions were applied, Ms. Waselchalk did not have the doctor's statements. They did not have the verification. By going to these classes everyday, they would miss their doctors' appointments.
- 11) "[REDACTED]" testified that the cancer is in her lymph nodes. When all of this first started was when they were suppose to go to class.
- 12) Ms. Waselchalk testified that they have certain time frames within which they have to work. The fact that the claimants were not able to go to class or do their community service- if she was notified by the claimants that they were not able to participate, she could have given them time to get the medical statements in to stop the case closure. She needed to know.

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- 13) The doctors statement for [REDACTED] is dated 01/18/05. (Exhibit C-1)
- 14) The medical statement for [REDACTED] shows she was evaluated by Dr. [REDACTED] on 12/02/04 (Exhibit C-2)

VIII. CONCLUSIONS OF LAW:

- 1) [REDACTED] signed the PRC agreeing to commit 26 hours per week for community service and participate in job search for 5 hours per week, [REDACTED] signed the PRC agreeing to attend Adult Basic Education classes 9 hours per week.
- 2) Mr. & Mrs. [REDACTED] did not comply with the terms of the PRC. The reason for the absence was they were ill.
- 3) . The claimants were notified of the proposed sanction in a RAPIDS letter dated 12/09/04 and a good cause appointment was set for 12/21/04. The letter was mailed to the correct address. The claimants contend they did not see the letter.
- 4) The claimants did not keep the good cause appointment and the sanction was imposed. Good cause was not established during the advance notice period.
- 5) Policy states 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. Also, to avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimants did not comply with the terms of their Personal Responsibility Contract (PRC) and did not establish good cause for not doing so during the advance notice period. It would appear that the medical statements provided after the sanction advance notice period had expired would have been considered by the case worker. However, she was not notified by the claimants as to why they were not adhering to the PRC. The Department is upheld in the decision to apply a sanction because the claimants did not comply with the terms of their Personal Responsibility Contract and did not show good cause for not doing so within the applicable time limits. The action described in the notification letter dated December 9, 2004 will be taken.

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X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29