

**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 April 20, 2005 for _____ and _____. 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 8, 2005 on a timely appeal filed January 4, 2005.

It should be noted here that Mrs. _____ and _____'s WEST VIRGINIA WORKS benefits have been continued pending a hearing decision.

A pre-hearing conference was held between the parties. Mrs. _____ and _____ did not have legal representation in this particular matter.

All parties agreed to provide truthful information during the hearing

II. PROGRAM PURPOSE:

The Program WEST VIRGINIA 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 home, reduce dependency by promoting job preparation, work and marriage.

WV WORKS will expect and assist parents and care-taker 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 program by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

_____ and _____, Claimant

Melinda Burt, Family Support Specialist – [REDACTED] District DHHR Office

Presiding at the hearing was Ray B. Woods, Jr., M. L. S., State Hearing Officer and, a Member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

Did _____ and _____ comply with the terms and responsibilities of their Personal Responsibility Contracts (PRC's)?

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 1.25 T (1 & 2) PERSONAL RESPONSIBILITY CONTRACT (PRC); West Virginia Income Maintenance Manual Section 13.9 SANCTIONS; West Virginia Income Maintenance Manual Section 13.10 GOOD CAUSE FOR FAILURE TO PARTICIPATE and; West Virginia Income Maintenance Manual Chapter 24.4 LOCAL OFFICE RESPONSIBILITIES IN THE WORK PROGRAM ASPECT OF WV WORKS.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

Exhibit A	Case Comments
Exhibit B	Personal Responsibility Contracts (PRC's) dated 05/27/04 for _____
and	and _____
Exhibit C	[REDACTED] SPOKES Student Time Sheet for 06/04 – _____ and _____
Exhibit D	Personal Responsibility Contract Sanction Requests for _____ and _____
Exhibit E	Notification of Sanction dated 07/12/04
Exhibit F	WVIMM Chapter 24.3 MINIMUM HOURS OF PARTICIPATION
Exhibit G	Case Comments
Exhibit H	Personal Responsibility Contract Sanction Requests – _____ and _____
Exhibit I	Case Comments
Exhibit J	Case Comments
Exhibit K	PRC Updated 08/10/04 – _____ and _____
Exhibit L	Case Comments
Exhibit M	PRC Updated 09/07/04 – _____ and _____
Exhibit N	PRC's signed by _____ and _____ dated 10/18/04
Exhibit O	Case Comments
Exhibit P	Personal Responsibility Contract Sanction Request – _____ and _____

Exhibit Q	Notification of 2 nd Level Sanction & Good Cause Appointment dated 11/29/04
Exhibit R	Appointment Letter to update PRC dated 11/24/04
Exhibit S	Personal Responsibility Contract Sanction Request – _____ and _____
Exhibit T	Notification of 3 rd Level Sanction & Good Cause Appointment dated 12/13/04
Exhibit U	Case Comments
Exhibit V	Appointment Letter for Pre-Hearing Conference dated 01/04/05

VII. FINDINGS OF FACT:

1) The issue in this particular matter is _____ and _____'s failure to comply with their Personal Responsibility Contracts. The Department is seeking to implement a 3rd sanction against the WV WORKS Benefits. The Case Worker included Exhibits on previous sanctions.

2) Ms. Burt submitted the following Hearing Summary and Case Comments:

_____ and _____ presented at the _____ DHHR office on 5-19-04 for the purpose of requesting cash assistance. (Exhibit A)

On 5-27-04 the client signed off on a PRC which stated she agreed to participate in a work/training activity. (Exhibit B)

It was discovered that the client and spouse not participating regularly in their assigned activity. (Exhibit C) Sanction was applied to the client's case on (Exhibit D) Client's notified of sanction secondary to non-participation on 7-12-04 (Exhibit E) Sanction applied in accordance with IM Manual chapters 24.3 (Exhibit F)

It was also discovered on 7-7-04 that client was not cooperating with the BCSE. (Exhibit G) Sanction was applied to the client's case on (Exhibit H) and this sanction was lifted on the same day following verification that client did cooperate. This sanction was imposed in accordance with IM Manual (Exhibit B- front of PRC)

It was also discovered on 7-9-04 that the client was not cooperating with quality assurance. (Exhibit I) Client counseled regarding this but no sanction was found to have been entered by this writer. QA did report on 7-9-04 that the client did cooperate with the QA review. (Exhibit J)

_____ presented on 8-10-04 and updated PRC in which she agreed to research vocational programs in her local area and return on 9-2-04 to see worker. (Exhibit K)

Client called to reschedule on 9-2-04.

Client did come in for good cause on 9-7-04 to discuss good cause for not participating in scheduled activity. And after consultation with WV Works Supervisor it was decided that agency would lift sanction for _____ but for _____' sanction would stand. (Exhibit L) _____ update PRC on this date and once again agreed to return in two weeks to update _____ PRC secondary to being given time to research vocational opportunities in her local area as she had apparently not done this. (Exhibit M)

Clients presented on 10-18-04 (over one month later not 9-21-04 as agreed) for the purpose of requesting emergency assistance and this worker noticed that the clients has not kept appointment to update PRC as scheduled and made use of the opportunity to do so. (Exhibit N) _____ agreed to a CWEP placement and _____ was given the opportunity to get verification from his father's doctor that he was needed in the home for the purpose of providing care for the father which was received shortly thereafter.

Client called worker to report that she was unable to go to CWEP assignment as she was now using husband's father's car and he did not want her to drive to _____ every day. (Exhibit O) Client agreed to come into the office to update PRC on the following Tuesday but did not do so and not did she contact this worker for almost a full month. This worker applied 2/3 sanction to the client's case on 11-24-04 secondary to continued failure to participate in any activity or contacting worker as arranged. Good cause scheduled for 12-9-04. (Exhibit P) Client notified of 2nd level sanction. (Exhibit Q) Also set an appointment to update PRC on 12-9-04 but did not present for either. (Exhibit R) Client did not report for either appointment or contact office to reschedule.

3/3 sanction applied on 12-10-04 secondary to clients not presenting for PRC update. (Exhibit S)

Client was notified of 3rd level sanction. (Exhibit T)

Client requested Fair Hearing on 12-28-04 and requested that benefits continue until hearing decision. (Exhibit U)

Client was also given the opportunity to meet with this worker for a pre-hearing conference. (Exhibit V)

12 28 04 PICKED UP A VOICE MAIL FROM CLIENT THIS DATE REQUESTING A FAIR HEARING. CLIENT STATED "I NEED MY BENEFITS AND THERE HAS BEEN A LOT GOING ON WITH US LATELY". CLIENT INDICATING THAT SHE WOULD LIKE BENEFITS TO CONTINUE UNTIL HEARING.

10 28 04 CLIENT CALLING LAST FEW DAYS REPORTING ON VOICE MAIL THAT SHE DID NOT ATTEND CWEP ASSIGNMENT AS HER FATHER IN LAWS CAR BROKE DOWN. REPORTS SHE HAS RECEIPTS FOR REPAIRS. CLIENT ALSO REPORTING THAT FATHER IN LAW DOES NOT WANT HER DRIVING HIS CAR ALL THE WAY TO _____ EVERY DAY FOR CWEP AT PROCESS STRATAGIES. CLIENT WAS GIVEN FRIDAY AND MONDAY TO

EXPLORE VOCATIONAL/WORK OPTIONS & HAS AGREED ON THE PHONE THIS DATE TO PRESENT ON TUESDAY TO UPDATE PRC. WILL PLACE CLIENT ON CWEP AT [REDACTED] WITH LANDSCAPING CREW.

- 3) Mr. _____ and _____ did not attend the scheduled Fair Hearing
- 4) Mrs. _____ and _____ did not provide Good Cause for not complying with her Personal Responsibility Contract.

VIII. CONCLUSIONS OF LAW:

1) West Virginia Income Maintenance Manual Chapter 1.25 T (1 & 2) Personal Responsibility Contract (PRC) states in part:

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.

Some of the items listed on the PRC duplicate information on the OFS-2. However, the signature on the OFS-2 does not substitute for the signature on the PRC and vice versa.

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 and 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 services listed on the form may be Support Service Payments or any other type of service provided to the client or to which he has been referred. When there are no support services available at the time to appropriately address the barrier, the Worker must note this on the form and periodically review the availability of needed services.

The client must initial each change to the Self-Sufficiency Plan when it is made on a 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 approval of the case, it is a working document and revisions are made when either the client or the Worker believes it necessary. Frequent changes are expected as the client progresses toward his goal.

2) West Virginia Income Maintenance Manual Section 13.9 SANCTIONS states 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.

A. 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 cash assistance. 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 benefit group is currently eligible to receive, for 3 months

2nd Offense = 2/3 reduction in the check amount, prior to recoupment, that the benefit group 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 6 months or until compliance, whichever is longer.

3) West Virginia Income Maintenance Manual Section 13.10 GOOD CAUSE FOR FAILURE TO PARTICIPATE states:

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 is issued...

NOTE: A good cause determination is not required when the client is exempt from participation.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period”.

4) West Virginia Income Maintenance Manual Section 24.4 LOCAL OFFICE RESPONSIBILITIES IN THE WORK PROGRAM ASPECT OF WV WORKS states:

In addition to the responsibilities contained in other chapters of this Manual, the Worker has responsibilities related to the work program aspect of WV WORKS.

The Worker must assist the client in all reasonable ways to achieve self-sufficiency. To accomplish this, the Worker must assess the client's knowledge and skills, work with the client and make informed recommendations about courses of action appropriate for each individual to develop a plan that is expected to lead to self-sufficiency. In addition, he must enter into an agreement with the client concerning his involvement in the process of becoming self-sufficient, monitor the client's progress to determine changing needs and the need for support service payments and take appropriate follow-up action based on the client's actions.

The eligibility requirement of the negotiated agreement, the Personal Responsibility Contract, is detailed in Chapter 1. Other requirements, particularly those dealing with the client's continuing eligibility, are found throughout this Manual. Chapter 13 contains other information about the eligibility aspect of the work requirements. The following sections in this Chapter are devoted to work activities and follow-up actions and contain information necessary for the Worker to assist the client in becoming self-sufficient and in developing opportunities for him.

IX. DECISION:

It is the decision of this State Hearing Office to UPHOLD the proposal of the Department in this particular matter. A third sanction will be applied to _____ and _____'s WV WORKS Benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29