



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 3, 2005

Dear Ms. [REDACTED]:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 22, 2005. Your hearing request was based on the Department of Health and Human Resources' action to impose a WEST VIRGINIA WORKS Sanction.

In arriving at a decision, the State Hearings 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 is based on current policy and regulations. Some of these regulations state as follows:

When a member of the AG does not comply with requirements found on his PRC, a sanction must be imposed unless the Worker determines that good cause exists. (WV Income Maintenance Manual Section 13.9 – SANCTIONS).

The information submitted at your hearing revealed; You did not have good cause for failing to participate in the WEST VIRGINIA WORKS Program.

It is the decision of the State Hearings Officer to UPHOLD the ACTION of the Department to impose the necessary sanction.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Tammy Garriss, Family Support Specialist

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

██████████
Claimant,

Action Number: 05-BOR-5714

**v. West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on October 3, 2005 or ██████████. 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 June 22, 2005 on a timely appeal filed May 13, 2005.

It should be noted here that the claimant's benefits have not been continued pending a hearing decision. A pre-hearing was held between the parties prior to the fair hearing and, Ms. ██████████ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled WEST VIRGINIA WORKS is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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. 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. The goals of WV Works are to achieve more efficient and effective use of public assistance funds, reduce dependence on public programs by promoting self-sufficiency and structure the assistance programs to emphasize employment and personal responsibility.

III. PARTICIPANTS:

██████ Claimant
Tammy Garris, Family Support Specialist – ██████ 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:

The question(s) to be decided is Did Ms. ██████ have good cause for failing to participate in the WEST VIRGINIA WORKS Program?

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 13.9 – SANCTIONS and; WV Income Maintenance Manual Section 13.10 - Good Cause for Failure to Participate for WV WORKS.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Schedule of appointments dated 05/24/05
- D-3 Notice of Decision dated 05/04/05
- D-4 Good Cause Letter dated 05/03/05
- D-5 WV WORKS Appointment Letter dated 04/25/05
- D-6 Individual Comments dated 01/14/05 – 05/31/05
- D-7 WVIMM Section 13.9 SANCTIONS
- D-8 WVIMM Section 13.10 GOOD CAUSE
- D-9 Personal Responsibility Contract (PRC) dated 01/14/05
- D-10 Scheduling Notice dated 05/16/05
- D-11 GroupWise Messages re: Scheduling

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

1) WV Income Maintenance Manual Section 13.9 - SANCTIONS:

When a member of the AG 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

NOTE: 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.

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 or until compliance, whichever is later.

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 predetermined number of months, regardless of case status.

A. Concurrent Sanctions

When an additional offense for the same or a different requirement occurs during a sanction period, the next level of sanction is imposed, after proper notification. The client must also be given the opportunity to establish good cause, regardless of the length of time remaining for the sanction that is already in effect. Sanctions may, therefore, run concurrently. When 2 or more offenses, by the same individual or by different individuals in the same AG, occur prior to the worker's having mailed the advance notice to the client, it is treated as if only one offense has occurred. Even though all offenses must be addressed in the client notification, only one sanction is imposed. However, if an additional offense, by the same individual or by a different individual(s), occurs after the Worker has mailed the client notification of the preceding offense, an additional sanction may be imposed after proper notification and the opportunity to establish good cause.

2) **WV Income Maintenance Manual Section 13.10 - Good Cause for Failure to Participate for WV WORKS:**

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 requirement and/or adhere to his PRC requirements, the Worker must determine the reason for such failure or refusal.

Failure or refusal to comply, 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: A good cause determination is not required when the client is exempt from participation. See Section 13.8 for exemptions.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period. See item 13.8, A. 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 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 6 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. See items 24.5 - 24.13 for minimum requirements. If none are listed for the activity, the Worker has the discretion to determine if the activity placed unsuitable requirements on the client.
- 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. However, once a sanction has been imposed, it cannot be stopped, until the appropriate time has elapsed, or the appropriate action is taken.

- A requirement of the Office of Social Services precludes participation for a specified period of time.
- He refuses to accept surgery which would eliminate or significantly improve his condition, even if the refusal precludes participation.

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.

3) The Department imposed a fifth sanction against Ms. [REDACTED]'s WEST VIRGINIA WORKS' Benefits, for missing a scheduled appointment. A Good Cause appointment did not provide justification for lifting the sanction. The sanction will be an automatic three (3) month interruption of cash benefits from June 1, 2005 through August 31, 2005.

4) Ms. Tammy Garris provided the following Hearing Summary:

1/14/05 [REDACTED] IN OFFICE TO COMPLETE WV WORKS APPLICATION HAVE ENROLLED CLIENT INTO WV WORKS COMPONENT. SHE IS TO CONTACT [REDACTED] AT [REDACTED] TO BEGIN 5-WEEK EDUCATIONAL COURSE ("ALLIED HEALTH")

2/17/05 CLIENT FAILED TO PROVIDE TIMESHEET REFLECTING HER HOURS OF PARTICIPATION IN ASSIGNED WV WORKS ACTIVITY. SHE HAD NOT CONTACTED [REDACTED] NOR DID SHE ATTEND AGREED UPON ACTIVITY. NO ACTION TAKEN ON CASE AT THIS TIME.

4/4/05 CLIENT SCHEDULED TO COME IN OFFICE FOR REVIEW, AND WV WORKS ACTIVITY PLACEMENT. NO CALL, NO SHOW FOR THIS APPOINTMENT. NO ACTION TAKEN ONCASE.

4/7/05 CLIENT PHONED TO RESCHEDULE APPOINTMENT SHE HAD MISSED ON 4/4/05. RESCHEDULED FOR 4/19/05.

4/19/05 [REDACTED] IN OFFICE TO COMPLETE CASE REVIEW. CLIENT INFORMS THAT HER AUNT IS MANAGER OF [REDACTED]", AND THAT SHE HAS APPLIED FOR EMPLOYMENT THERE. ADDS THAT SHE IS CONFIDENT SHE'LL BE HIRED. ALSO ADDS THAT SHE HAD BEEN "APPROVED FOR FINANCIAL AID" AND WILL BE ATTENDING COLLEGE.

4/25/05 HAD NOT HEARD FROM CLIENT IN REGARDS TO EMPLOYMENT WITH "[REDACTED]"; SENT CLIENT APPOINTMENT LETTER TO COME INTO OFFICE ON 5/2/05 TO BE PLACED INTO REQUIRED WV WORKS ACTIVITY; ALSO ASSIGNED CLIENT TO ATTEND COUNTY CSM'S GROUP MOTIVATIONAL DISCUSSION IN OUR OFFICE ON 5/5/05.

5/2/05 CLIENT DID NOT APPEAR FOR TODAY'S APPOINTMENT. WWWORKS CASEMANAGER AMY SAMPLES RETURNED PHONE CALL TO [REDACTED] AS CLIENT CALLED IN REGARDS TO APPOINTMENTS. CLIENT STATES THAT HER

COUSIN HAS "3 CHILDREN NEEDING CHILDCARE" WORKER REMINDED CLIENT OF 5/5/05 APPOINTMENT WITH CSM.

5/4/05 APPLIED 3/3 SANCTION TO CASE AS CLIENT FOR MISSING 5/2/05 APPOINTMENT. "GOOD CAUSE HEARING" SCHEDULED FOR 5/9/05 @ 9AM.

5/5/05 CLIENT NEGLECTED TO COME IN FOR SCHEDULED APPOINTMENT WITH CSM, NOR DID SHE CALL. AS 3/3 SANCTION ALREADY IMPLEMENTED, NO FURTHER PUNITIVE ACTION TAKEN ON CASE.

5/13/05 CLIENT PHONED OFFICE REQUESTING "FAIR HEARING" DUE TO APPLICATION OF 3/3 SANCTION. SCHEDULED "PRE-CONFERENCE HEARING" FOR 5/31/05 @ 1PM.

5/9/05 CLIENT IN OFFICE AT 11AM FOR "GOOD CAUSE" HEARING WHICH WAS SCHEDULED FOR 9AM. WORKER NOT AVAILABLE. WV WORKS CASEMANAGER TARA MCGRAW SPOKE WITH CLIENT. [REDACTED] STATED THAT SHE WAS UNABLE TO KEEP APPOINTMENTS DUE TO CAR "BLOWING UP", AND THAT SHE BEGAN BABYSITTING ON 5/2/05. MRS. MCGRAW EXPLAINED TO CLIENT THAT SHE WOULD RELAY THE INFORMATION TO CASE WORKER, WHO IS THE ONE TO MAKE THE DECISION CONCERNING "GOOD CAUSE". WORKER CALLED CLIENT AND ADVISED THAT PER DISCUSSION WITH MRS. MCGRAW, CLIENT HAD NOT VERIFIED GOOD CAUSE, THUS SANCTION WOULD STAND. CLIENT REQUESTS "FAIR HEARING". "PRE CONFERENCE" MEETING SCHEDULED FOR 5/31/05 @ 1PM.

5/31/05 CLIENT NO CALL, NO SHOW FOR PRE CONFERENCE HEARING.

5) Ms. [REDACTED] began babysitting on May 2, 2005. She believes the lack of a telephone and transportation are good cause for not making the scheduled appointment with her case worker. According to Ms. [REDACTED] she must rely on family and friends while trying to raise two small children without a husband.

VIII. CONCLUSIONS OF LAW:

The lack of transportation and/or a telephone are not good cause reasons for failing to participate in WEST VIRGINIA WORKS activities.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the ACTION of the Department in this particular matter.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 3rd Day of October, 2005.

Ray B. Woods, Jr., M.L.S.
State Hearing Officer