



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 27, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 26, 2005. Your hearing request was based on the Department of Health and Human Resources' action to reduce your WV Works assistance check by 2/3 due to a second 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 WV Works assistance check Program 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).

The information which was submitted at your hearing revealed that you failed to comply with the requirements of your PRC signed on November 4, 2004 by failing to keep appointments and you did not have good cause for such failure.

It is the decision of the State Hearings Officer to uphold the action of the Department to reduce your WV Works assistance check by 2/3 due to a second sanction.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
David Napier, Dept. Hearing Rep.

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

_____,

Claimant,

v.

Action Number_____

**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 July 26, 2005 for _____. 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 July 26, 2005 on a timely appeal, filed June 1, 2005 by telephone conference at the request of the claimant.

It should be noted here that the claimant's benefits have not 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.

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:

1. _____, Claimant.
2. _____, Claimant's mother.
3. David Napier, Dept. Hearing Rep.
4. Anita Hayes, Family Support Specialist.
5. Mary Beth Barker, Family Support Specialist.

Presiding at the Hearing was Thomas M. Smith, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Department took the correct action to reduce the WV Works assistance check due to a second sanction.

V. APPLICABLE POLICY:

13.9, 13.10, 24.4.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of Personal Responsibility Contract signed 11-15-04.
- D-2 Copy of appointment letter mailed 4-12-05 for 4-20-05.
- D-3 Copy of appointment letter mailed 4-21-05 for 4-28-05.
- D-4 Copy of second sanction notification letter 5-2-05 (3 pages).
- D-5 Copy of WV Income Maintenance Manual Section 13.9.

VII. FINDINGS OF FACT:

- 1) Claimant was a recipient of the WV Works Program and received an assistance check (TANF) and signed a Personal Responsibility Contract (PRC) on 11-15-04 (Exhibit #D-1) agreeing to the terms and requirements listed, including "keeping all appointments with DHHR case manager".
- 2) A first sanction was imposed on claimant's case on 4-12-05 when a time sheet from the ABE class she was assigned to returned showing she was not attending full-time as required but the claimant did not request a hearing on the first sanction.
- 3) An appointment letter was mailed on 4-12-05 for the claimant to attend an appointment in the local DHHR office on 4-20-05 at 8:45 a.m. to be placed in an activity with the WV Works Program (Exhibit #D-2) and the claimant did not keep the appointment.

- 4) A second appointment letter was mailed on 4-21-05 for the claimant to attend an appointment in the local DHHR office on 4-28-05 at 3:30 p.m. to be placed in an activity with the WV Works Program (Exhibit #D-3) and the claimant did not keep that appointment.
- 5) A second sanction notification letter was mailed on 5-2-05 to reduce the WV Works assistance check from \$151 to \$76 effective 6-1-05 and scheduling a good cause appointment at the local office on 5-5-05 at 11:00 a.m. (Exhibit #D-4).
- 6) An appointment was scheduled to conduct a home visit with the claimant on 5-4-05 and caseworker Anita Hayes conducted the home visit along with co-worker Mary Beth Barker and good cause was discussed during the home visit and the claimant reported that she did not receive any of the letters and had no transportation but Ms. Hayes determined that good cause did not exist and the sanction remained in effect.
- 7) The claimant requested a hearing on 6-1-05 on the issue of the second sanction.
- 8) The claimant testified that Ms. Hayes came to her house one time and said she was not going to sanction her and told her not to beg as she did not like people who begged, that she has no car or other transportation, and that she missed three (3) pre-natal appointments with her doctor because she had no transportation.
- 9) Ms. [REDACTED] testified that she was with her daughter in the local office when Ms. Hayes told her she would not sanction her, that she heard Ms. Hayes tell her daughter on the home visit that she would not sanction her, and that her daughter has no transportation.
- 10) Ms. Hayes testified that she did not tell the claimant on the home visit that she would not sanction her, that she told her she was going to review the case, that the sanction was applied for missing appointments, that the claimant could have called her but didn't, that the claimant told her she had friends with cars, that she previously told the claimant she would not sanction her as she lifted that sanction, and that she did not say she would remove the second sanction.
- 11) Ms. Barker testified that she was with Ms. Hayes on the home visit, that Ms. Hayes did not say she would remove the sanction, and that Ms. Hayes did not say she did not like people begging.
- 12) WV Income Maintenance Manual Section 13.9 states, in part:

"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.....

"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:

2nd Offense = 2/3 reduction in the check amount, prior to recoupment, that the benefit group is currently eligible to receive, for 3 months".

13) WV Income Maintenance Manual Section 13.10 states, 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 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.

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.

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.....

- 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.....

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.....”

- 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.

VIII. CONCLUSIONS OF LAW:

- 1) WV Income Maintenance Manual Section 13.9 states that when a member of the AG does not comply with requirements found on his PRC, a sanction is imposed unless the Worker determines that good cause exists. That same section defines a 2nd Offense sanction as one which reduces the check amount by 2/3. The claimant failed to keep two (2) appointments scheduled for 4-20-05 and 4-28-05. The PRC completed and signed by the claimant on 11-15-04 includes the requirement that she keep appointments.
- 2) WV Income Maintenance Manual Section 13.10 provides the standards for good cause for failing to participate with WV Works Program requirements and states that transportation can be claimed as good cause only if the travel required to participate would exceed one-hour. The claimant testified that she had no transportation but did not claim that travel would exceed one hour. The claimant did not substantiate good cause for failing to participate with WV Works Program requirements.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to reduce the WV Works assistance check by 2/3 effective 6-1-05 due to a second sanction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of July, 2005.

**Thomas M. Smith
State Hearing Officer**