



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
9083 Middletown Mall
White Hall, WV 26554

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

October 15, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 30, 2010. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your WV WORKS benefits based on the application of a third-level 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 WV 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, the sanction consists of ineligibility for cash assistance for 3 months. (West Virginia Income Maintenance Manual § 13.9)

Information submitted at your hearing demonstrates that you failed to comply with the requirements of your Personal Responsibility Contract (PRC).

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your cash assistance based on the imposition of a third-level sanction in your WV WORKS case. The sanction will be effective November 1, 2010 through January 31, 2011.

Sincerely,

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

Pc: Erika H. Young, Chairman, Board of Review
Susan Drake, FSS, DHHR

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

-----,

Claimant,

v.

Action Number: 10-BOR-1807

**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 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 hearing was convened on September 30, 2010 on a timely appeal filed August 23, 2010.

It should be noted that the Claimant's WV WORKS benefits were continued pending a hearing decision.

II. PROGRAM PURPOSE:

The purpose of WV WORKS is to help economically dependent, at-risk families become self-supporting. It is a work-oriented, performance-based, time-limited program that emphasizes employment and personal responsibility. 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 assistance to emphasize employment and personal responsibility.

III. PARTICIPANTS:

-----, Claimant

-----Claimant's mother/witness

Susan Drake, Family Support Specialist (FSS) WVDHHR

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 Department of Health and Human Resources was correct in its proposal to terminate the Claimant's cash assistance benefits provided through the WV WORKS Program based on the imposition of a third-level sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 13.10, 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notice of Decision dated August 18, 2010
- D-2 WV WORKS Personal Responsibility Contract (PRC) – Signed November 30, 2009
- D-3 West Virginia Income Maintenance Manual, Chapter 13.9
- D-4 West Virginia Income Maintenance Manual, Chapter 24.4
- D-5 West Virginia Income Maintenance Manual, Chapter 1.25
- D-6 Appointment Notice from [REDACTED] Vocational Assessment Specialist, dated July 20, 2010.

VII. FINDINGS OF FACT:

- 1) On or about August 18, 2010, the Claimant was notified via a Notice of Decision (Exhibit D-1) that the Department of Health and Human Resources, hereinafter Department, was applying a third-level sanction to her WV WORKS benefits. This notice states, in pertinent part:

Your WV WORKS /WVEAP benefits will stop. You will not receive this benefit after August 2010.

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

This correspondence further indicates that a good cause interview has been scheduled for the Claimant on August 25, 2010 at 9:00.

- 2) The Department, represented by Susan Drake, a Family Support Specialist, submitted Exhibit D-2 (Claimant's PRC signed on November 30, 2010) and noted that the Claimant is required to keep all appointments with DHHR. Ms. Drake noted that the Claimant has multiple health problems and that she has been medically exempt from participation in a work or training placement due to a statement from her physician. As a result, Ms. Drake indicated that an appointment was scheduled for the Claimant with Vocational Rehabilitation to assess employment / training potential with her physical / medical limitations.

- 3) On or about July 20, 2010, the Claimant was notified by ----(Exhibit D-6), a Vocational Assessment Specialist, that an appointment had been scheduled for her at the ██████████ County DHHR on August 4, 2010 at 9:00 a.m.

In an e-mail correspondence (included in Exhibit D-6), ----notified Susan Drake that the Claimant failed to appear for the August 4, 2010 appointment. Ms. Drake testified that the Claimant phoned her and indicated she was confused about the scheduled appointment and verbally agreed to reschedule the Vocational Rehabilitation appointment on August 16, 2010 at 10:30 a.m.

On August 16, 2010, Ms. Drake was again notified via e-mail correspondence from ----(included in Exhibit D-6) that the Claimant failed to appear for the August 16, 2010 appointment. Ms. Drake testified that on August 17, 2010, the Claimant phoned her and indicated she was unable to appear for the August 16, 2010 appointment because she had to take her daughter for a medical physical.

- 4) The Department contends that the Claimant failed to appear for her first scheduled appointment but because the Claimant attempted to contact Ms. Drake prior to the appointment, and the Claimant was confused about who the appointment was with, the appointment was rescheduled. The third-level sanction was not imposed until the Claimant failed to appear for her second appointment without notice. Ms. Drake testified that the Claimant should have rescheduled her daughter's physical since this appointment had been rescheduled to accommodate the Claimant. Ms. Drake acknowledged that the Claimant did eventually undergo the Vocational Rehabilitation assessment.
- 5) The Claimant testified that she did not make the original appointment on August 4, 2010 but that she called Ms. Drake prior to the appointment and left a voice message indicating she would not be there. The Claimant purported that she spoke with Ms. Drake on the phone the following week (Monday) and agreed to appear for the appointment with Vocational Rehabilitation on August 16, 2010. While the Claimant acknowledged that she agreed to attend the August 16, 2010 appointment, she also stated that she did not understand why she had to meet with Vocational Rehabilitation when she has a doctor's statement indicating she cannot do work activity. The Claimant testified that – "I thought it was a waste of my time and that I wouldn't benefit from it."
- 6) Policy found in Chapter 1.25, T, of the West Virginia Income Maintenance Manual 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.

- 7) West Virginia Income Maintenance Manual, Chapter 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.
Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.
- 8) The West Virginia Income Maintenance Manual, Chapter 13.10, sets forth good cause criteria for failure to meet work requirements or adhere to the Personal Responsibility Contract. This policy goes on to state that the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The Worker has considerable discretion in imposing a sanction.
- 9) West Virginia Income Maintenance Manual, Chapter 13.9 (C) states that the imposition of a sanction may be delayed by a Fair Hearing request. When the Department is upheld, the sanction begins in the month following the Fair Hearing decision.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the benefit group does not comply with the requirements found on his/her PRC, a sanction must be imposed unless the worker determines that good cause exists. A third-level sanction results in closure/termination of cash assistance for three months. While there are specific circumstances noted in policy for which good cause can be granted, policy goes on to state that the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The worker has considerable discretion in imposing a sanction. Policy goes on to note once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.
- 2) The Claimant signed her PRC on November 30, 2009 indicating that she would keep all appointments with DHHR. The Claimant was provided two opportunities to attend an assessment with Vocational Rehabilitation at the DHHR and failed to appear for either appointment. While the Claimant indicated she was confused about the first appointment on August 4, 2010, she verbally agreed to appear at the August 16, 2010 appointment when it was rescheduled to accommodate her. The explanation for missing the second appointment is reasonable, except the Claimant should have contacted the Department and rescheduled. The Claimant's disability statement from her physician does not excuse her from complying with the requirements of her PRC. Because the Claimant failed to appear or contact the Department on or before August 16, 2010 to advise she was unable to keep her scheduled appointment, the third-level sanction was correctly imposed.
- 3) The Department's decision to impose a third-level sanction in the Claimant's WV WORKS case is therefore affirmed. The sanction will be effective November 1, 2010 through January 31, 2011.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Claimant's WV WORKS benefits based on the imposition of a third-level sanction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of October 2010.

**Thomas E. Arnett
State Hearing Officer**