



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

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

June 29, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 27, 2011. Your hearing request was based on the action of the Department of Health and Human Resources 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.

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: 11-BOR-1230

**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 June 27, 2011 on a timely appeal filed May 18, 2011.

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

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 or not the Department of Health and Human Resources was correct in its action to terminate the Claimant's WV WORKS cash assistance benefits 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 April 4, 2011
- D-2 Referral and Communications Form (DHS-1) dated March 15, 2011
- D-3 WV WORKS Personal Responsibility Contract (PRC) – Part 1 of 2
- D-4 WV WORKS Personal Responsibility Contract (PRC) – Part 2 of 2 (signed 3/30/11)
- D-5 West Virginia Income Maintenance Manual, Chapter 13.9
- D-6 West Virginia Income Maintenance Manual, Chapter 24.4
- D-7 West Virginia Income Maintenance Manual, Chapter 1.25

VII. FINDINGS OF FACT:

- 1) On or about April 4, 2011, 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 April 2011.

A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC) and/or the Self Sufficiency Plan (SSP).

This correspondence goes on to notify the Claimant that a good cause interview was scheduled on April 8, 2011 at 9:30 a.m.

- 2) The Department, represented by Susan Drake, a Family Support Specialist, submitted Exhibit D-2 (Referral and Communication Form, DHS-1, dated March 15, 2011) to show that she was contacted by the Bureau for Child Support Enforcement (BCSE) and advised that the Claimant failed to appear for two scheduled appointments. The BCSE requested that the Claimant be placed in a sanction due to non-cooperation.

- 3) The Department submitted Exhibit D-3 and D-4 (Part 1 and Part 2 of the Personal Responsibility Contract, hereinafter PRC) to show that the Claimant was aware she was required to cooperate with the BCSE as a condition of receiving WV WORKS cash assistance. As indicated in Finding of Fact #1, a good cause interview was scheduled for the Claimant on April 8, 2011 at 9:30 a.m., and the Claimant failed to appear. As a result, the Claimant was placed in a sanction and cash benefits were terminated for May, June and July 2011. The Department noted that the Claimant also failed to appear for a previously scheduled appointment at the Department on April 6, 2011 and that the Claimant did not contact her until she filed for her appeal on May 18, 2011.
- 4) The Claimant testified that she was aware she had missed one appointment with the BCSE but stated that she was really ill at the time. The Claimant further purported that she did not appear for the good cause appointment, or contact Ms. Drake, because she did not receive the notice. She indicated that she realized her benefits were not available in early May 2011, but was unable to explain why she did not contact her worker until May 18th. The Claimant later testified that she lives with her parents and that they helped her take care of her two children and get her mail while she was ill.
- 5) The Department noted the Claimant was provided a physician's form and she was supposed to provide the completed form at the April 6, 2011 scheduled appointment (noted on Exhibit D-4). As a matter of record, this form has not been completed and returned by the Claimant as of the date of the hearing.
- 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.

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 evidence submitted (Part 1 and Part 2 of the PRC) clearly states that the Claimant is required to cooperate with the BCSE. The Claimant indicated that she knew she missed one appointment with the BCSE due to illness but was unaware she had missed a second appointment. While the Claimant's reported medical problems may limit her ability to participate in work activities, policy stipulates that she must demonstrate that she is attempting to comply with the requirements of her PRC to the best of her ability.

The facts of this case, however, reveal that the Claimant is unable to provide a reasonable explanation why she failed to contact the Department for a period of six weeks following the April 4, 2011 sanction notice. Her contention that she did not appear at the good cause appointment on April 8, 2011 because she did not receive the sanction notice is not credible as she also failed to appear for a previously scheduled appointment on April 6, 2011. Moreover, the Claimant's mailing address has been verified and there was no information submitted to indicate any of the Claimant's mail has been returned by the post office. The Claimant has failed to appear at scheduled appointments without notifying her worker, she failed to appear for her good cause appointment, and she has not provided a physician's statement that would excuse her absences or explain why she is unable to contact her worker by telephone. Upon consideration of these facts, it is clear that the Claimant is not complying, or attempting to comply, with the requirements of her PRC.

- 3) The Department's decision to impose a third-level sanction in the Claimant's WV WORKS case is therefore affirmed.

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 June 2011.

**Thomas E. Arnett
State Hearing Officer**