



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

Earl Ray Tomblin
Governor

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

August 30, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 16, 2011. Your hearing request was based on the Department of Health and Human Resources' proposed termination of your WV WORKS benefits due to a 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 Assistance Group or non-recipient Work-Eligible Individual does not comply with requirements found on her Personal Responsibility Contract, a sanction must be imposed unless the Worker determines that good cause exists (West Virginia Income Maintenance Manual, Chapter 13.9).

The information submitted at your hearing revealed that you did not comply with your Personal Responsibility Contract, and failed to establish good cause.

It is the decision of the State Hearing Officer to **uphold** the Department's termination of your WV WORKS benefits due to a sanction.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Ashley Elam, Family Support Specialist

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1327

**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 August 30, 2011, 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 August 16, 2011 on a timely appeal, filed June 14, 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
Ashley Elam, Department representative

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to impose a WV WORKS sanction, terminating benefits to the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 13.10; 24.4.D

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Notification dated May 26, 2011
- D-2 Personal Responsibility Contract (PRC) dated March 24, 2011
- D-3 Individual Comments and Case Comments screen prints
- D-4 Excel Weekly Participant Progress Report for week of April 11, 2011; Participant Time Sheets for April 2011 and May 2011
- D-5 Supportive Service Payments screen print
- D-6 West Virginia Income Maintenance Manual, Chapters 24.5; 24.3

VII. FINDINGS OF FACT:

- 1) Ashley Elam, a Family Support Specialist for the Department, testified that the Department notified the Claimant (Exhibit D-1) on or about May 26, 2011, that her WV WORKS benefits would be closed due to a sanction. The notice states, in pertinent part:

ACTION: Your WV WORKS/WVEAP benefits will stop. You will not receive this benefit after JUNE 2011.

REASON: 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).

The letter additionally provided the specific sanction reason as "FAILING TO ATTEND AN ASSIGNED ACTIVITY" and scheduled an appointment to allow the Claimant to provide good cause for the PRC violation. The Claimant appeared for a rescheduled good cause appointment and offered transportation difficulties as her reason for insufficient activity attendance. The Department determined that she did not meet good cause and proceeded with their decision to sanction and terminate the Claimant's WV WORKS benefits.

- 2) The Personal Responsibility Contract (PRC) (Exhibit D-2) was signed by the Claimant and Janice McCoy – another Family Support Specialist for the Department – on March 24, 2011. This document lists required assignments or activities, and includes the requirement stating, “BEGIN GED CLASSES AT EXCEL, 04/04/11 @ 8:30 ATTEND AT LEAST 20 HRS PER WEEK.”
- 3) Ms. Elam testified that the Claimant contacted her in April 2011 to explain that the lack of gas money was hurting her activity attendance, and she issued the Claimant a transportation payment of \$40.00 to assist. The Department presented a printout listing this payment (Exhibit D-5) and a May 2011 payment for transportation. The May 2011 payment was delayed, according to Ms. Elam’s testimony, because the April 2011 timesheet (Exhibit D-4, page 2 of 3) was not signed by the Claimant initially; the payment was issued on May 18, 2011, when Ms. Elam testified she received the signed document.
- 4) Ms. Elam testified that she completed a home visit with the Claimant on May 11, 2011, discussed her activity attendance, and explained that she would not place a third sanction terminating the Claimant’s WV WORKS benefits as long as the Claimant met her PRC requirement of 20 hours per week for the remainder of May 2011.
- 5) Ms. Elam testified that the decision to sanction the Claimant’s case – terminating her WV WORKS benefits – was made when she discovered that the Claimant only attended her activity for three hours between May 12, 2011 and May 19, 2011; Ms. Elam noted that 28 attendance hours were available to the Claimant during that time period.
- 6) The Claimant testified that she does not have a car. She testified that she was paying people gas money for rides to her required activity, and that this was expensive. She testified that her residence is on a bus line. She testified that she gave Ms. Elam excuses for ten missed days, and was told that only five of the excuses could be accepted. She testified that she did not meet her PRC requirement of 20 hours per week, but that she was not under this threshold every week, as indicated by her timesheets. Ms. Elam testified that the allowable missed hours per month must be made up to meet participation requirements.
- 7) The Claimant’s time sheets (Exhibit D-4) indicate that she attended four days, or 16.5 hours, in April 2011, and four days, or 10.5 hours, in May 2011.
- 8) The West Virginia Income Maintenance Manual, Chapter 1.25.T, provides for the implementation of sanctions, as follows, in pertinent part:

Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in imposition of a sanction against the AG. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred. See Section 13.9 for information about sanctions.

- 9) The West Virginia Income Maintenance Manual, Chapter 13.9, defines sanctions as follows (emphasis in original):

A. DEFINITION OF SANCTION

NOTE: Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.

Sanctions are applied in the form of benefit reductions and, for the 3rd or subsequent offense, termination of benefits. The amount of the benefit reduction is a fixed amount and is determined as follows:

1st Offense = 1/3 reduction in the benefit amount, prior to recoupment, that the AG is currently eligible to receive, for 3 months

2nd Offense = 2/3 reduction in the benefit 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 benefit amount the client would be eligible to receive, prior to recoupment; if it was not already reduced by 1/3.

3rd and All Subsequent Offenses = Ineligibility for cash assistance for 3 months.

- 10) The West Virginia Income Maintenance Manual, Chapter 13.10, discusses good cause as follows, in pertinent part:

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. The Worker may determine that the requirement was inappropriate based upon additional assessment. An appointment to update the PRC and place the individual in another component must be scheduled as soon as possible. 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.

VIII. CONCLUSIONS OF LAW:

- 1) Policy for the WV WORKS program requires cooperation with the PRC, unless good cause is established. There is no dispute that the Claimant's PRC required participation in an activity for twenty hours per week. The Claimant agrees that she did not meet this participation requirement most of the time in April and May 2011, but contends that she did not fail to meet the requirement every week in that time period; however, there is no reason to doubt the accuracy of timesheets completed by the site supervisor for the Claimant's required activity. The Claimant failed to comply with a PRC requirement.
- 2) Policy for WV WORKS additionally requires sanctions against WV WORKS benefits when PRC non-compliance is without good cause. The Claimant explained that transportation problems limited her ability to attend her activity; however, the Department provided her with a payments to assist with transportation costs, and the Claimant testified that bus service was available as an alternative to the more expensive choice of paying gas money for others to provide transportation for her. The Claimant failed to establish good cause for PRC non-compliance. The Department was correct to apply a third-level sanction terminating the WV WORKS benefits of the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the WV WORKS benefits of the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August, 2011.

Todd Thornton
State Hearing Officer