



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

September 27, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 27, 2011. Your hearing requests were based on the Department of Health and Human Resources' proposed reduction of WV WORKS benefits due to two separate sanctions.

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, in both instances, 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 reduction of your WV WORKS benefits due to sanctions.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Jason Evans, Family Support Specialist

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

**IN RE:**        -----,

**Claimant,**

**v.**

**ACTION NOS.: 11-BOR-1384; 1792**

**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 September 27, 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 September 27, 2011 on timely appeals, filed June 23, 2011 and August 16, 2011.

It should be noted that benefits have been continued through the hearing process.

**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  
Jason Evans, 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 two WV WORKS sanctions, reducing benefits to the Claimant.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 13.10; 24.4.D; 24.14

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Hearing Summary
- D-2 Personal Responsibility Contract (PRC) dated May 19, 2011
- D-3 Participant Time Sheet for June 2011
- D-4 Notification dated June 16, 2011
- D-5 Personal Responsibility Contract (PRC) dated July 29, 2011
- D-6 Participant Time Sheet for August 2011
- D-7 Notification dated August 15, 2011
- D-8 West Virginia Income Maintenance Manual, Chapters 1.25; 13.9

**VII. FINDINGS OF FACT:**

- 1) Jason Evans, a Family Support Specialist for the Department, testified that the Department notified the Claimant of two separate sanctions reducing WV WORKS benefits to the Claimant, on or about June 16, 2011 (Exhibit D-4) and on or about August 15, 2011 (Exhibit D-7). The June 2011 notice states, in pertinent part:

A sanction will be applied to your assistance group effective 07/11. This is the first sanction and will continue for 3 months [*sic*]

Your WV WORKS benefit amount before any repayment is taken out will be reduced by 1/3.

This sanction is being applied due to the failure of ----- to meet the terms of the Personal Responsibility Contract by FAILING TO ATTEND AN ASSIGNED ACTIVITY.

The notice scheduled a good cause appointment with the Claimant on June 23, 2011, and Mr. Evans testified that the Claimant did not appear for this appointment.

- 2) The August 2011 notice (Exhibit D-7) of sanction to the Claimant states, in pertinent part:

ACTION: Your WV WORKS/WVEAP will decrease from \$340.00 to \$227.00 effective 09/01/11.

REASON:

A first 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 notice scheduled a good cause appointment with the Claimant on August 18, 2011, and Mr. Evans testified that the Claimant did not appear for this appointment.

- 3) Mr. Evans testified that the Claimant signed a Personal Responsibility Contract (PRC) on May 19, 2011 (Exhibit D-2) and – subsequent to case closure and reapplication by the Claimant – a second PRC on July 29, 2011 (Exhibit D-5). Both documents list the required assignments or activities as including “MAINTAIN WORK ACTIVITY OF 128 HOURS,” and list that activity as EXCEL classes. The Department presented Participant Time Sheets documenting the Claimant’s participation in EXCEL classes during June 2011 (Exhibit D-3) and August 2011 (Exhibit D-6). These forms document the Claimant’s participation in his PRC activity for 8.5 of the 128 hours required in June 2011, and for 5.5 of the 128 hours required in August 2011.
- 4) The Claimant did not dispute the participation hours documented by the Department, but did offer excuses for three days and transportation problems as his good cause for the lack of participation. He testified that he was unable to attend his required activity for three days in August 2011 – August 2, August 5, and August 10 – because he was obtaining his registration from the State Police, enrolling his children in school, and had a required court appearance, respectively. He testified that transportation was a problem for him, because of vehicle repair issues that have yet to be resolved and the \$4.00 daily expense of bus transportation that would reduce the portion of his WV WORKS benefits that he could devote to other monthly expenses. He noted that both PRCs listed “transportation” as a challenge or barrier to stated PRC goals, and “transportation services” as a resource to overcome that barrier. He cited Chapter 24.14 of the West Virginia Income Maintenance Manual, and opined that he should have received support payments for transportation to address this barrier.

- 5) West Virginia Income Maintenance Manual, Chapter 24.14, states, in pertinent part:

Payment for support services is authorized to assist WV WORKS participants in securing or maintaining employment or participating in other activities.

The type and amount of any payment made must be based on need, i.e., without receiving the payment in that amount the client is not able to participate in an activity. Available services must be discussed and needs assessed by the Case Worker and the client during the interview and assessment process and at reviews. The client may also request services as needs arise.

Support services may be issued during any month for which a WV WORKS payment is made. In addition, some former Work-Eligible Individuals in a previous WV WORKS case continue to be eligible for support service payments as long as the conditions in Section 24.16 are met. This Section contains information about support services available to active AG members and non-recipient Work-Eligible Individuals in the household.

NOTE: Although non-recipient Work-Eligible Individuals are not in the AG, they are eligible to receive support services and payments as long as they meet all other eligibility requirements.

#### A. WHO IS ELIGIBLE

Those who meet all of the following criteria are eligible for payment of support services:

- Work-Eligible Individual in an active WV WORKS case for the month for which the support service payment is intended.
- A non-recipient parent, step-parent, or caretaker relative receiving SSI who has chosen to volunteer to participate in a work activity.
- Participating, or preparing to participate, in a work activity listed in Sections 24.6 – 24.13.
- Not in a 3rd or subsequent sanction for the month for which the support service payment is intended. Those who are in a 1st or 2nd sanction period are eligible for support services. There is no corresponding reduction in the amount of the support service payment due to either the 1st or 2nd sanction.

- Did not receive WV WORKS fraudulently or is not subject to repayment for the total monthly allotment.

- Has not received and is not expected to receive, a DCA payment which covers the month for which the support service is requested.

Manage Payments screens for Work Programs are used to inquire, request a payment, stop a payment and to replace support service payments.

- 6) Mr. Evans testified that the Claimant was issued a bus pass for transportation. The Claimant confirmed this, and testified he received this in May 2011. Mr. Evans additionally testified that the Department provided a voucher to pay for car repair, but the mechanic chosen by the Claimant to repair the vehicle has failed to do so. After the bus pass was issued for transportation needs in the June 2011 activity period, the Claimant testified that he was told that he would need to pay bus fare out of his WV WORKS benefits. Mr. Evans testified that a support payment for transportation would have been considered after the Claimant had been documented as participating in his activity, but because the Claimant did not meet his required number of participation hours, no support payment for transportation was issued.
- 7) The Claimant testified that he ultimately wants to find employment, and that some of the time he was not at his required activity he was seeking employment. In his testimony he described problems he has obtaining employment, as well as a job he obtained and lost during July 2011 and a present job offer contingent on providing his own tools. The PRCs signed by the Claimant in May 2011 (Exhibit D-2) and July 2011 (Exhibit D-5) list employment as program goals; however, the documents do not list job search as the Claimant's assigned activity.
- 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:

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 EXCEL classes for 128 hours per month, or that the Claimant did not meet this requirement in June 2011 or August 2011. 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 failed to appear for Department-scheduled appointments to discuss potential good cause, but explained in this hearing that transportation problems and other appointments were his good cause for PRC non-compliance.

The Department noted that the Claimant lives in an area served by a local bus line. The Claimant testified that to use the bus would cost him \$4.00 per day, and opined that he should have received support payments to address his transportation barrier. Further clarification of this issue – through both the testimony of the Claimant and the Department representative – revealed that the Department provided both a bus pass and a voucher to assist with car repair to address the Claimant’s transportation issue.

The Claimant provided excuses for three days in August 2011, noting appointments that required him to miss EXCEL classes. These three days would not bridge the gap between the 5.5 hours of participation performed and the 128 hours required in August 2011. It should also be noted that the transportation barriers offered as an excuse for PRC non-compliance did not prevent the Claimant from making these appointments.

The Claimant stated that some of the time he did not attend his activity, he was actively seeking employment. Although the ultimate goals listed in the Claimant’s PRC are full-time or part-time employment, the PRC requirements do not list job search as his activity, nor give the Claimant discretion to choose between his assigned activity and job search.

It is reasonable of the Department to expect the Claimant to pay for his transportation out of his WV WORKS benefits after two separate resources – a bus pass and a car repair voucher – were offered and did not affect the Claimant’s level of participation.

The policy language in Chapter 24.14.A of the West Virginia Income Maintenance Manual, cited by the Claimant as evidence of his eligibility for support payments, states that as a condition of receiving support payments, an individual must be “participating, or preparing to participate, in a work activity...” and, given the Claimant’s failure to use the bus pass for his required activity in June 2011, it is reasonable for the Department to make a potential support payment dependent on actual, documented participation rather than issue a third form of resource, in advance, to address the Claimant’s transportation problem.

With no satisfactory good cause for unmet participation requirements in either June 2011 or August 2011, the Department was correct to impose sanctions against the Claimant’s WV WORKS benefits in July 2011 and September 2011.



**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the action of the Department to reduce the WV WORKS benefits of the Claimant through two separate sanctions.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of September, 2011.**

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**Todd Thornton**  
**State Hearing Officer**