



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

Board of Review
P.O. Box 1736
Romney, WV 26757

**Earl Ray Tomblin
Governor**

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

August 17, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 8, 2011. Your hearing request was based on the action of the Department of Health and Human Resources' to reduce your WV WORKS cash assistance by applying a first 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 first offense, the sanction consists of a one-third reduction in the benefit amount for a period of three months. (West Virginia Income Maintenance Manual Chapter 13.9)

The information which was submitted at your hearing revealed that you did not present good cause for your failure to comply with the requirements of your Personal Responsibility Contract.

It is the decision of the State Hearing Officer to Uphold the action of the Department to implement a first sanction against your WV WORKS cash assistance and reduce your benefits by one-third for three months.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Brittany Scarlett, Family Support Specialist

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1447

**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 fair hearing was convened on a timely appeal, filed June 21, 2011.

It should be noted here that the Claimant's benefits under the WV WORKS program continue at the previous level of determination pending a decision from the State Hearing Officer

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 witness

Brittany Scarlett, Family Support Specialist

Presiding at the hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct in its action to reduce the Claimant's WV WORKS cash assistance by implementing a first level sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 13.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 Personal Responsibility Contract signed May 3, 2011
- D-3 Participant Time Sheets for May 2011
- D-4 Service Coordination Activity Notes from West Virginia Birth to Three
- D-5 West Virginia Income Maintenance Manual Chapters 1.25, 13.9, and 24.4
- D-6 Notice of Decision dated June 14, 2011

Claimants' Exhibits:

- C-1 Prescription Pad Note from [REDACTED] M.D. dated July 15, 2011
- C-2 Physician's Written Excuse from [REDACTED] Urgent Care
- C-3 Letter from [REDACTED] Neurological Consultants
- C-4 Prescription Pad Note from [REDACTED] M.D. dated June 13, 2011
- C-5 Application for Non-Emergency Medical Transportation Reimbursement Program

VII. FINDINGS OF FACT:

- 1) On May 3, 2011, the Claimant completed Exhibit D-2, Personal Responsibility Contract as an update to her goals and requirements of the WV WORKS cash assistance program. Exhibit D-2 documents the Claimant's goals and assignments as:

Goals	Target Date
Full Time Employment	March 31, 2011
To find care for son with seizure	March 31, 2011
Assignment/Activity	Begin Date/Due Date

Keep all appts [sic] with BCSE/DHHR	5/1/11-5/1/12
Start CWEP 5/3/11 at DHHR	5/3/11-5/3/12
Keep all scheduled appointments	1/31/11-N/A
Keep all appts [sic] with BCSE	1/31/11-N/A
Do 85 hours a month at DHHR	5/2/11-5/2/12
Take TABE on 5/26/11 at DHHR	5/1/11-5/26/11
Submit [sic] timesheets by the 5 th of	5/2/11-5/2/12
Each mon [sic]	

- 2) -----, Family Support Specialist testified that the WV WORKS program is a work first program and the Claimant was entered into a Community Work Experience Program, hereinafter CWEP, with the West Virginia Department of Health and Human Resources. ----- indicated that the Claimant was scheduled to participate from 1:30 P.M to 5 P.M., as scheduled, for 85 monthly hours. ----- provided Exhibit D-3, Participant Time Sheets for May 2011, to demonstrate that the Claimant showed satisfactory attendance prior to June 6, 2011. ----- purported that the Claimant failed to participate in her CWEP activity for the week of June 6, 2011 through June 10, 2011 and was placed in a 1st sanction.
- 3) On June 14, 2011, the Claimant was issued Exhibit D-6, Notice of Decision which documents in pertinent part:

Your application for WV WORKS/WVEAP dated 6/13/11 has been approved. You are approved to get WV WORKS/WVEAP beginning 7/1/11. You will get 227.00 each month.

Reason: A first sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC) and/or Self Sufficiency Plan.

A sanction will be applied to your assistance group effective 7/11. This is the first sanction and will continue for 3 months.

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.

We want to resolve this issue and determine if you had good cause for not meeting the terms of your contract.

We have scheduled a GOOD CAUSE interview for ----- on (N/A) at (N/A) at the office address listed above.

If this appointment is NOT kept, the sanction listed above WILL be applied to your benefits.

- 4) ----- testified that a good cause hearing regarding the implemented sanction was scheduled for June 9, 2011. In conversations with the Claimant, the good cause hearing was rescheduled for June 13, 2011, to coincide with a previously scheduled eligibility recertification. At the good cause appointment, the Claimant provided Exhibit D-4, Service Coordination Activity Notes from West Virginia Birth to Three. This exhibit documents the Claimant's meetings with West Virginia Birth to Three for the dates of May 17, 2011, June 6, 2011, June 9, 2011, and June 11, 2011. With the exception of the appointment dated June 6, 2011, all other appointments with West Virginia Birth to Three were scheduled before 1:30 P.M., the time in which the Claimant was scheduled to participate with her CWEP agreement. ----- testified that she did not award the Claimant good cause for her failure to participate at the June 13, 2011 good cause appointment because the Claimant's appointments with West Virginia Birth to Three were scheduled prior to her assigned volunteer time. Additionally, ----- noted that the Claimant failed to notify the Department that she could not volunteer on the scheduled days documented in Exhibit D-4.
- 5) The Claimant testified that her son, who is 23 months old, has a developmental delay and experiences seizures that range in severity. The Claimant provided documentation that her son has disabilities which include a seizure disorder with speech delay and an outlined treatment plan for such disorder (Exhibit C-1, C-3, C-4). The Claimant testified that her son was experiencing seizures during the week of June 6, 2011 through June 10, 2011 and required constant monitoring. The Claimant testified that she did not call the Department to inform them that she was unable to participate on her scheduled days during the week in question. The Claimant indicated that she is attempting to get her son's seizures under control and his medication dosage has been increased. The Claimant's witness provided testimony describing the Claimant's son's seizures and his reaction to care. The Claimant testified that she is attempting to secure Social Security income, through the assistance of Legal Aid, for her son because she is unable to work and take her son to daycare.

The Claimant provided testimony indicating that she had various appointments during the week of June 6, 2011 through June 10, 2011. The Claimant provided Exhibit C-5, Application for Non-Emergency Medical Transportation, to demonstrate that she had a medical appointment on June 4, 2011 at 1:00 P.M. and her son on June 9, 2011 at 2:30 P.M. The Claimant provided Exhibit C-2, Physician's Written Excuse from [REDACTED] Urgent Care to demonstrate that she was ill on June 2, 2011 and unable to attend her assignment due to illness and was able to return to work on June 3, 2011 with no restrictions or limitations.

----- provided rebuttal testimony that the Claimant was participating with her CWEP agreement until the first week of June, 2011 and the Department provided supportive services payments in order to facilitate her participation. ----- stated that she has attempted to secure information from the physician regarding the Claimant's inability to engage in a work activity, but has only received information concerning the Claimant's son's disability. ----- purported that she has had conversations with the neurologist's office which have indicated that the Claimant's son is

capable of attending daycare and that the Claimant is capable of participating with the required participation.

- 6) West Virginia Income Maintenance Manual § 1.25 documents in pertinent part:

The Personal Responsibility Contract (PRC) is a contract between each of the adult or emancipated minor members of the WV WORKS AG, or non-recipient Work-Eligible Individual(s), and the Worker, as the representative of the Department. Completion and signature of the PRC form is required prior to approving the WV WORKS AG.

Failure, without good cause, to adhere to the responsibilities or any task listed on the PRC after signature, results in imposition of a sanction against the AG.

- 7) West Virginia Income Maintenance Manual §13.9 states:

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.

The client must also be given the opportunity to establish Good Cause.

- 8) West Virginia Income Maintenance Manual §13.10 states in pertinent part:

All mandatory Work-Eligible Individuals must be placed into a relevant and a current component for tracking and monitoring purposes on approval date. The participant must remain in that component whether or not they are working, cooperating, or sanctioned until either the case is closed or the Case Manager and participant agree to change the component. Not meeting participation requirements or being sanctioned are not reasons to disenroll the participant from their assigned component(s). Some reasons for granting good cause for temporarily not meeting participation requirements are life events or problems such as, but not limited to:

- The death of a spouse, parent, child, or stepchild.

- In accordance with the Family and Medical Leave Act (FMLA) of 1993, an acute, life threatening illness of a spouse, parent, or child that requires the client's immediate attention. This does not include individuals who are exempt

from participation due to caring for a disabled family member as outlined in section 13.8.

- The minimum suitability standards for the specific activity are not met. See Sections 24.5 – 24.13 for minimum requirements. If none are listed for the activity, the Worker must determine if the activity placed unreasonable requirements on the client. Individuals granted good cause for this reason must be scheduled an appointment or home visit to review the situation and possible PRC update.

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.

- The parent, an included non-parent caretaker, or a non-recipient Work-Eligible Individual 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. The PRC must be updated and these individuals should be placed in the VT, AB, or CL components as soon as possible.

....

Failure or refusal to comply, without good cause, results in imposition of a sanction. When the Worker discovers the failure or refusal, a notice of adverse action must be issued. When a letter is mailed scheduling the good cause interview, the Worker must allow no less than 7 calendar days. This period begins the day following the date the letter is requested in RAPIDS, or the day following the date a manual letter is sent. If the letter is hand delivered, case comments must be made indicating the date the letter was given to the client. If the appointment is scheduled for a date prior to the 7 calendar days, the participant and the Worker must agree on the appointment date. See Section 6.3, Items D and E, A Worker generated letter from RAPIDS or a manual letter, DFA-WVW-NL-1 is used.

VIII. CONCLUSIONS OF LAW:

- 1) Policy stipulates that 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. A penalty for a first-level sanction results in a one-third reduction of WV WORKS cash assistance for a three month period. Policy lists specific circumstances in which the recipient may be granted good cause for the infraction and the worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his or her ability, understands the requirements, and the sanction process. Policy notes that the worker has considerable discretion when imposing the sanction.
- 2) The Claimant's PRC clearly documents that she was required to participate with a CWEP agreement for 85 monthly hours. While the Claimant maintains her inability to participate in a work activity, due to her son's seizure disorder, she failed to report to the Department that she was unable to participate with the requirements of the program during the negotiation of the PRC and signed the contract accordingly. The evidence reveals that the Claimant was in violation of her PRC when she failed to participate in her CWEP activity for the week of June 6, 2011 through June 10, 2011. As an attempt to establish good cause for the infraction, the Claimant provided documentation of appointments that occurred prior to her scheduled work time and did not constitute good cause.
- 3) In absence of evidence which documents that the Claimant was unable to engage in a work activity due to her son's disability, good cause cannot be granted and the Claimant is bound by the terms of the PRC. The Department's decision to implement a first sanction against the Claimant for failing to adhere to the requirements of her PRC is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to implement a first sanction against the Claimant's WV WORKS assistance.

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.

Eric L. Phillips
State Hearing Officer