



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

November 1, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 19, 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 his Personal Responsibility Contract (PRC), 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 PRC, 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
Melinda Patrick, Family Support Specialist

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1640

**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 November 1, 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 October 19, 2011 on a timely appeal, filed August 3, 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
Melinda Patrick, 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 Hearing/Grievance Request Notification form; Notification of sanction, dated July 7, 2011
- D-2 Orientation to WV WORKS form, dated June 27, 2011; WV WORKS Personal Responsibility Contract (PRC), dated June 27, 2011; WV WORKS Self-Sufficiency Plan (SSP), dated June 29, 2011; CWEP Individual Participation Agreement, dated June 29, 2011
- D-3 Participant Time Sheet for July 2011
- D-4 West Virginia Income Maintenance Manual, Chapter 13.9
- D-5 West Virginia Income Maintenance Manual, Chapter 1.25

Claimant's Exhibit:

- C-1 Prescription pad note

VII. FINDINGS OF FACT:

- 1) Melinda Patrick, a Family Support Specialist for the Department, testified that the Department notified the Claimant (Exhibit D-1) on or about July 7, 2011, that his 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 JULY 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 failed to appear for this good cause appointment and the Department terminated the Claimant's WV WORKS benefits.

- 2) The Self-Sufficiency Plan (SSP) (Exhibit D-2) was signed by the Claimant and Ms. Patrick on June 29, 2011. This document lists required assignments or activities, and includes the requirement stating, "Maintain 85 hrs. mo. of assigned activity." Ms. Patrick testified that the Claimant's assigned activity was the Community Work Experience Program (CWEP), through the contractor of the W.V. Veterans Home. Ms. Patrick testified that the Claimant was to start this activity on July 5, 2011.
- 3) Ms. Patrick testified that the supervisor from the CWEP contractor called her on July 6, 2011 to report that the Claimant had not shown up for his assigned activity. On the same day, the Claimant reported to Ms. Patrick that he had been unable to attend his activity due to his daughter's broken collar bone. Ms. Patrick testified that she advised the Claimant to provide verification of the medical emergency to her and that she never received this verification.
- 4) The Claimant provided a prescription pad note (Exhibit C-1), intended as an excuse for the Claimant's missed activity days in July, 2011. It is unclear who signed the note, which is dated July 18, 2011, and states:

Please excuse from 7-5-11 to 7-8-11 as his daughter had an injury that prevented her from going to day care [*sic*]
- 5) The Department presented the Claimant's Participant Time Sheet (Exhibit D-3) for July, 2011. This document lists 52 participant hours for the Claimant in the month and no participation is noted for 12 of the 19 available days in the month, including the four days indicated in the Claimant's Exhibit C-1.
- 6) The Claimant testified that he turned in his excuse to the CWEP contractor instead of to the Department worker. He testified that the CWEP contractor told him that it would be faxed to the Department.
- 7) 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.

- 8) The relationship between the PRC and the SSP is explained in the following statement from the PRC (Exhibit D-2), in pertinent part (emphasis in original):

I understand that my Self-Sufficiency Plan is part of my PRC and that it can and will change as my life situation, needs, or goals change.

- 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 Personal Responsibility Contract (PRC), which includes the Self-Sufficiency Plan (SSP), unless good cause is established. The Claimant's SSP required participation in an activity for 85 hours per month. Evidence clearly shows that the Claimant participated for 52 hours in July 2011. The Claimant failed to comply with a PRC/SSP requirement.
- 2) Policy for WV WORKS additionally requires sanctions against WV WORKS benefits when PRC non-compliance is without good cause. The Claimant did not appear for a good cause appointment. The Claimant offered a medical excuse for non-compliance, but did not provide verification of the medical excuse directly to the Department, but instead to a third party he relied upon to forward the information; the Department indicated that it did not receive the excuse prior to this hearing. The excuse itself only addresses the first four of the twelve days the Claimant missed in July, 2011; the Claimant had eight other days in the month in which he could have made up lost activity time, but failed to do so. 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 November, 2011.

Todd Thornton
State Hearing Officer