



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 30, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 28, 2011. Your hearing request was based on the Department of Health and Human Resources' proposed reduction 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, 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 reduction 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  
Rebecca Stephens, Department Representative

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

**IN RE:**        -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1694**

**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 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 September 28, 2011, on a timely appeal, filed July 7, 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  
Rebecca Stephens, 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, reducing benefits to the Claimant.

**V. APPLICABLE POLICY:**

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

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

**Department's Exhibits:**

- D-1 Notification dated July 5, 2011
- D-2 Fair Hearing Request form
- D-3 Letter from [REDACTED] & Associates dated June 6, 2011
- D-4 Self-Sufficiency Plan (SSP) dated June 15, 2011
- D-5 Letter from [REDACTED] & Associates dated July 5, 2011
- D-6 Self-Sufficiency Plan (SSP) dated July 7, 2011
- D-7 Case comments
- D-8 West Virginia Income Maintenance Manual, Chapters 1.25; 13.9; 24.4

**VII. FINDINGS OF FACT:**

- 1) Rebecca Stephens, representative for the Department's WV WORKS unit, testified that the Department notified the Claimant (Exhibit D-1) on or about July 5, 2011, that his WV WORKS benefits would be reduced due to a sanction. The notice states, in pertinent part:

ACTION: Your WV WORKS/WVEAP benefits will decrease from \$301.00 to \$201.00 effective 08/01/11.

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 letter additionally provided the specific sanction reason as "FAILING TO KEEP APPOINTMENT," and scheduled an appointment to allow the Claimant to provide good cause for the PRC violation. The Claimant appeared for this good cause appointment and offered his memory difficulties as the reason for missing a scheduled appointment with the Department. The Department determined that he did not meet good cause and proceeded with their decision to sanction and reduce the Claimant's WV WORKS benefits.

- 2) The Claimant signed a Self-Sufficiency Plan (SSP) on two separate dates: June 15, 2011 (Exhibit D-4) and July 7, 2011 (Exhibit D-6). Both documents stated – as one of the required assignments or activities for the Claimant – that he must keep scheduled appointments with the Department, specifically stating, “KEEP APPTS WITH DHHR & BCSE,” and “KEEP ALL APPTS W/DHHR & BCSE,” respectively. The Claimant had no dispute that he had missed a July 1, 2011 appointment with the Department to update his Personal Responsibility Contract (PRC), only that he had good cause for missing because of his memory problems.
- 3) Two letters from [REDACTED] & Associates were presented by the Department. These documents were considered by the Department in the process of determining an activity for the Claimant. The first letter (Exhibit D-3), dated June 3, 2011, states, in pertinent part:

----- is seen at our practice for mental health care. His diagnoses are: major depression, bipolar disorder, anxiety and social anxiety. Due to symptoms related to these diagnoses he is unable to be around large groups of people or to sit in a classroom setting with several people without suffering from agitation and anxiety.

The second letter (Exhibit D-5), dated July 5, 2011, states, in pertinent part:

----- is able to perform duties related to employment such as reading, writing, driving, and following basic instructions as long as he is not around groups of people.

The two letters neither list a memory problem for the Claimant, nor qualify the Claimant’s abilities by referencing such a problem.

- 4) The SSPs completed and signed by the Department worker and the Claimant include a section to address challenges or barriers that could prevent the Claimant from completing stated goals. The challenges listed are all transportation-related; both documents list “NEMT,” a program designed to help provide medical transportation, and one of the documents lists “vehicle insurance.” Neither document lists memory problems, in this section or anywhere on the document, as something that could affect stated goals.

- 5) The Claimant testified that he has memory problems due to his medication, and even suffered memory problems to some extent prior to these medications. When asked what types of prompting or cues he uses to help him remember things he needs to do on a regular basis, his response indicated that the burden is placed on others to remind him, rather than any type of self-prompting. He stated that, anywhere else he has appointments, they call to remind him before the appointment. He stated that [REDACTED] & Associates does this, and that the Department is the “only” place that does not.
- 6) Case comments (Exhibit D-7) from July 1, 2011 – the date of the missed appointment in question – state, in pertinent part:

TOLD HIM HE MISSED A SCHEDULED APPT TO UPDATE PRC TODAY. STATED HE DOES NOT REMEMBER THE APPT NOR RECEIVING A LETTER. REMINDED HIM THAT WE SPOKE ON THE PHONE THE DAY I SCHEDULED THE APPT AND TOLD HIM THAT I HAD REMINDED HIM THAT I HIGHLIGHTED THE APPT TIME AND DATE W/GREEN HIGHLIGHTER. HE ASKED IF WE COULD CALL AND REMIND HIM ABOUT APPTS THE DAY BEFORE AS THAT IS WHAT W [REDACTED] DOES. TOLD HIM WE DON'T NORMALLY DO THIS AND SUGGESTED HE MARK APPTS ON THE CALENDAR. STATED HE DOES NOT HAVE A CALENDAR.

These case comments begin with an entry on June 6, 2011. There is no mention of the Claimant's stated memory problems prior to the July 1, 2011 entry when he indicated this was the reason he missed that appointment. Additionally, the Claimant did not offer testimony indicating that he had advised the Department of his memory problems prior to the good cause appointment.

- 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. See Section 13.9 for information about sanctions.

- 8) 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.

- 9) 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 or SSP, unless good cause is established. There is no dispute that the Claimant's SSP required keeping Department appointments, and no dispute that the Claimant failed to keep a July 1, 2011 appointment. The Claimant failed to comply with a PRC requirement.

- 2) Policy for WV WORKS additionally requires sanctions against WV WORKS benefits when PRC (or SSP) non-compliance is without good cause. The Claimant explained that he had good cause for missing a required appointment with the Department because of his memory problems. There is no indication that the Claimant advised the Department of this limitation prior to proposed sanctioning; memory problems were not mentioned in case comments (prior to the proposed sanctioning), two SSPs, or either of the two letters from the mental health agency that – according to the testimony of the Claimant – reminds him of all appointments. The Claimant testified that his medications cause memory limitations, but offered no medical documentation to support this claim. The Department, once aware of the Claimant's stated memory problems, attempted to resolve them by suggesting the use of a calendar; the case comments noting the Claimant's tacit refusal – expressed as if it would be impossible for him to buy and use a calendar – and his testimony that other parties simply remind him of all appointments and the Department should do this as well, are more indicative of a lack of general responsibility required by the program than any lacking memory. It is clear that the Claimant was aware of his requirements for WV WORKS, and that he was not complying with these requirements to the best of his ability. The Claimant did not have good cause for SSP non-compliance, and the Department was correct to apply a first sanction reducing 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 reduce 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 September, 2011.**

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