



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 9, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 2, 2011. Your hearing request was based on the Department of Health and Human Resources' 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) or Self-Sufficiency Plan (SSP), 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
Betty White, Family Support Specialist

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1801

**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 9, 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 November 2, 2011 on a timely appeal, filed August 19, 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
Eric Dotson, 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 Personal Responsibility Contract (PRC) dated May 17, 2011
- D-2 Sanction notification dated June 17, 2011
- D-3 Activity Restrictions letters from [REDACTED] Medical Center for -----
- D-4 West Virginia Income Maintenance Manual, Chapter 13.8
- D-5 West Virginia Income Maintenance Manual, Chapter 13.9

VII. FINDINGS OF FACT:

- 1) Eric Dotson, a Family Support Supervisor for the Department, testified that the Department notified the Claimant (Exhibit D-2) on or about June 17, 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 wanted to care for her ill grandmother as her activity; Mr. Dotson testified that this could not be allowed due to policy. The Department did not grant good cause, and terminated the Claimant's WV WORKS benefits.

- 2) The Personal Responsibility Contract (PRC) (Exhibit D-1) was signed by the Claimant on May 17, 2011. This document lists required assignments or activities, and includes the requirement stating, "----- will attend GED class at [REDACTED] 30/hours [sic] a week required for 128 a month."

- 3) Mr. Dotson testified that a Department worker called to check the Claimant's attendance on June 16, 2011, and verified that she had only attended one day in two weeks. The Department subsequently notified the Claimant (Exhibit D-2) of the sanction.
- 4) Mr. Dotson testified that the Department received and reviewed statements (Exhibit D-3) giving the Claimant medical excuses from activity. The first statement, dated June 13, 2011, states, in pertinent part:

Rest at home today and tomorrow. Return to work in two days. Return to school in two days. Do not work today, tomorrow (and excuse for 6/11). Do not go to school today, tomorrow.

The second statement, dated June 9, 2011, states, in pertinent part, "Do not go to school tomorrow."

Mr. Dotson testified that these statements were accepted as excuses for lack of attendance by the Claimant on June 10, 2011, June 13, 2011, and June 14, 2011; however, these excuses were insufficient for the two weeks that the Claimant had not attended her activity and good cause was not granted based on these excuses.

- 5) The Claimant testified she did not attend her activity because she was caring for her ill grandmother. Mr. Dotson testified that policy does allow for this, but only when the individual is caring for another person that resides in their home. The Claimant was not residing with her grandmother in June, 2011.
- 6) The West Virginia Income Maintenance Manual, Chapter 13.8, provides exemptions from meeting the work requirement for WV WORKS and states, in pertinent part (emphasis added):

Care For A Disabled Family Member (TW) - A parent who is providing medically necessary care for a disabled family member **who resides in the home**. Medical documentation must be provided to support the need for the parent to remain in the home to care for the disabled family member. This documentation must be reviewed at least once quarterly and verified by a doctor's statement. This care cannot be counted as participation hours under any activity. When medical documentation is obtained that the family member is no longer disabled, the parent becomes a Work-Eligible Individual and must be assigned to a countable activity. Only 1 parent or step-parent at a time can be temporarily exempt for this reason. Individuals under this exemption must be shown in RAPIDS component code TW;

- 7) The West Virginia Income Maintenance Manual, Chapter 13.9, states, in pertinent part:

13.9 WV WORKS SANCTIONS

When a member of the AG or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC or SSP, a sanction must be imposed unless the Worker determines that good cause exists. Information about development of the SSP is found in Chapter 24. Information about the PRC and SSP as an eligibility requirement is found in Chapter 1.

NOTE: When the person whose actions cause a sanction to be imposed becomes an SSI recipient prior to imposition of the sanction, no sanction is imposed. In addition, the offense is not counted when determining the level of subsequent sanctions. If the family has already been sanctioned when the offender becomes an SSI recipient, the sanction is lifted as soon as possible considering RAPIDS deadlines. The partial sanction already served counts when determining the level of the subsequent sanctions.

NOTE: If a disabled client chooses to participate, no sanction is imposed for failing to meet the work requirements if the Worker or Supervisor determines the participant failed to meet the SSP requirements due to his disability. WV WORKS participants who have a documented disability must be placed in the AD component in Work Programs in addition to other component codes.

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 = Ineligibility for cash assistance for 3 months.
Subsequent
Offenses

- 8) 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) or Self-Sufficiency Plan (SSP), unless good cause is established. The Claimant's PRC required participation in an activity for 30 hours per week, for a total of 128 hours per month. Although the Claimant had valid excuses for three days in June, 2011, she only participated one day in the first two weeks of that month. 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's explanation that she was caring for an ill relative is understandable, but is not allowable as a work exemption by policy because the ill relative was not residing with the Claimant. 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