



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

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

November 2, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 27, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to reduce your WV WORKS cash assistance based on the imposition of a second (2nd) 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 West Virginia 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. The client must be given the opportunity to establish good cause. For a second offense, the sanction consists of 2/3 reduction of the check benefit for 3 months. Once a sanction has been imposed, it cannot be stopped until the appropriate action is taken or the appropriate time has elapsed, whichever is later. (West Virginia Income Maintenance Manual § 13.9)

The information submitted at your hearing demonstrates that the Department was correct in applying a second (2nd) level sanction against your West Virginia WORKS cash assistance benefits.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a second (2nd) level sanction in your WV WORKS case.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Jason Spence, [REDACTED] DHHR

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-2042

**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 hearing convened on October 27, 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

Jason Spence, Department Representative

Presiding at the Hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its decision to impose a second (2nd) level sanction against the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 13.10, 24.3, 24.13 & 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 August 2011 Timesheet and attached PLATO Web Learning Network printout
- D-2 Notification letter dated September 15, 2011
- D-3 Case Comments from Department's computer system from September 22, 2011 through October 3, 2011
- D-4 Verification of tutoring timesheet for August 2011 and letter from tutor, undated
- D-5 Request for Hearing form dated October 3, 2011 and IG-BR-29 form
- D-6 Various policy from West Virginia Department of Health and Human Resources Income Maintenance Manual Chapter 24
- D-7 Request for Hearing form dated October 5, 2011 – two copies
- D-8 Copy of Scheduling Order dated October 13, 2011 from Hearing Officer

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving West Virginia WORKS, hereinafter WV WORKS, cash assistance when on September 15, 2011, the Department determined that she had not participated her minimum required hours during the month of August 2011.
- 2) The parties agreed that the Claimant had previously signed a Personal Responsibility Contract, hereinafter PRC, in which she and the Department agreed that she would participate for a minimum of eighty-five (85) hours monthly by attending an Adult Basic Education, hereinafter ABE, class at [REDACTED] School to meet her participation requirements.
- 3) The Department sent the Claimant a notification letter which informed her that a good cause appointment had been scheduled for her on September 23, 2011, at 2:00 p.m., to determine whether she had good cause for not attending the class for the required minimum hours.

- 4) The Department representative, Jason Spence, is the Claimant's WV WORKS case worker. He testified that during the good cause interview the Claimant was unable to provide information that would allow him to find good cause for her failure to complete the required minimum hours in her activity. He added that the Claimant told him at the good cause interview that she had "a lot of things going on at the time," and that she had been unable to get all her hours in at the school during the month of August 2011. Mr. Spence did not elaborate specifically to explain what the Claimant reportedly was going through which had prevented her from attending classes at the school for the required timeframe. This information is also not documented in the case comments (D-3) recorded in the Department's computer system for that date. Mr. Spence also stated that at this time the Claimant reported to him that she had been receiving tutoring services from an individual in her home. He stated that the Claimant told him this individual was affiliated with the school and that he had been tutoring her both at the school and in her home.
- 5) The Claimant provided the Department with a letter (D-4) from -----which is undated. In the letter, -----purports that he is a volunteer tutor attached to [REDACTED] Community and Technical College's Learning Lab. He adds that he met the Claimant there and that he has been working with her in and out of the Learning Lab. He adds that he is a student at [REDACTED] Technology and that he receives credit toward his class for tutoring the Claimant. He attached a copy of an August 2011 timesheet which he purports represents hours he has spent with the Claimant in her home tutoring her in math. The timesheet (D-4) totals thirty-one (31) hours.
- 6) Mr. Spence stated that he attempted to verify with the school whether the tutor was affiliated with them so that he could consider the hours. He stated that he also left telephone messages with the tutor in an attempt to determine if he had any kind of certification, but added that the tutor did not return his call. He stated that the Director of ABE classes at [REDACTED] informed him that the tutor is a volunteer tutor at the school, but that he was not "set up" to assist the Claimant by [REDACTED]. He stated that the Director also informed him that because the tutor was not affiliated with the school, the hours he spent tutoring the Claimant in her home could not be verified by the school. As a result, Mr. Spence determined that the hours could not be considered when determining whether the Claimant completed the required hours in her agreed upon assignment at the school.
- 7) The Claimant testified that she is trying to "get her hours in" at the school, but added that she often had to leave school early to attend to her three (3) year old child's needs. She stated that she has been unable to find someone in her area to care for her child through a child care agency, and that her grandmother had been babysitting the child during the period in question. She added that the grandmother often called her during class requesting that she leave the class to care for her child for various reasons. She stated that she did not document these incidents with the school or provide the school with any medical excuses for her absences because she was unaware that she should be doing so. She stated that a teacher at the school where she attends ABE classes suggested that she utilize the tutor in her home in order to assist her in preparation for taking her GED test. She stated that the tutor she utilized had been volunteering at the school, and that he agreed to also tutor the Claimant in her home to help improve her math skills. She stated that the school will not verify the at-home hours and that the only way to verify them is for the tutor to document the time. She added that since she had been utilizing the tutor in her home her pre-test scores had improved to a level which showed she is "almost" ready to take her GED test. The Claimant offered no testimony to support that she reported her

child care problems to Mr. Spence during her good cause interview. She also did not report to Mr. Spence prior to the good cause interview that she was utilizing a tutor in her home.

- 8) Policy found in Chapter 1.25, T, of the West Virginia Income Maintenance Manual provides that the PRC form (OFA-PRC-1) is a negotiated contract between the adult or emancipated minor members of the WV WORKS AG (assistance group) and the Worker. Failure, without good cause, to adhere to the responsibilities contained in Part 1 of the PRC results in imposition of a sanction against the benefit group. Refusal or other failure, without good cause, to adhere to the self-sufficiency plan (Part 2 of the PRC) results in imposition of a sanction against the benefit group.

- 9) West Virginia Income Maintenance Manual section 24.3 states in pertinent part:

A. REQUIRED PARTICIPATION

Each adult and emancipated minor who receives WV WORKS benefits and non-recipient Work-Eligible individual must meet a work requirement at a minimum rate of participation.

A single Work-Eligible parent with a child under age 6 meets the work participation requirement by participating 85 hours/month or 20 hours/week.

B. ABSENCES

Workers must determine whether absences are excused or unexcused.

School breaks are not counted as participation hours. Only Federally designated holidays which occur during the regular school year are counted as participation hours. These include New Year's, Martin Luther King Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Excused absences of up to 16 hours/month, not to exceed a maximum of 80 hours in the 12-month period, including the current and the preceding 11 months, may be counted as hours worked in that month.

C. PARTICIPANT DOCUMENTATION

1. Methods of Documenting Participation Hours

All hours of participation in activities must be verified. The Participant Timesheet, DFA-TS-12, is the standard timesheet used to document participation. When used, it is given to providers to report attendance and satisfactory progress in the activity. These timesheets may also be given to the client to have providers complete. Some employers/sponsors have their own timesheets. These are acceptable means of verification as long as these timesheets provide the necessary information and are signed by the site supervisor. Documentation is required and must be available from the activity

site at least monthly to support what is reported for participation and may include electronic records.

10) West Virginia Income Maintenance Manual section 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 or until compliance, whichever is later.

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

11) West Virginia Income Maintenance Manual 24.4 states:

The Worker must assist the client in all reasonable ways to achieve self-sufficiency. To accomplish this, the Worker must assess the client's knowledge and skills, work with the client and make informed recommendations about courses of action appropriate for each individual to develop a plan that is expected to lead to self-sufficiency. In addition, he must enter into an agreement with the client concerning his involvement in the process of becoming self-sufficient, monitor the client's progress to determine changing needs and the need for support service payments and take appropriate follow-up action based on the client's actions.

To meet the goals of the WV WORKS Program, a worker performs the following activities for WV WORKS families:

- Negotiates the PRC with the client to determine the best means to
- achieve self-sufficiency and accept personal responsibility.
- Monitors compliance with the PRC
- Determines good cause for failure to comply with the PRC
- Applies sanctions as appropriate

12) West Virginia Income Maintenance Manual Section 24.13 states in pertinent part:

NON-CORE WORK ACTIVITIES

Following are the remaining 3 allowable work activities in which participation hours are allowed as long as the minimum hours of participation are met in one or more of the nine core activities.

One hour of supervised homework time must be counted as participation hours for each hour of class time under any of the 3 activities below. Supervised homework may count if the hours of participation can be documented.

The total number of homework hours credited towards participation must be documented in Work Programs comments and must be based on the number of homework hours required or advised by the educational program.

NOTE: The three activities listed below, although they do not meet the Federal definition of Core Work Activities, are acceptable full-time activities for WV WORKS participants under State Law.

C. SATISFACTORY ATTENDANCE AT SECONDARY SCHOOL OR GED PROGRAMS (HS, AB)

Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate means regular attendance, according to the requirements of the secondary school or GED program.

This activity, unlike education directly related to employment, is not restricted to those for whom obtaining a GED is a prerequisite for employment. It may include other related educational activities, such as adult basic education or GED. Participants must be making “good or satisfactory progress” in order for this activity to count. A standard of progress established by the educational institution must be monitored such as grade point average and a time frame in which the participant is expected to complete such education. The Worker must collaborate with the teacher(s) or instructors to monitor this standard of progress. Most WV WORKS participants attending GED programs will fall under this activity.

- 13) The West Virginia Income Maintenance Manual §13.10 provides policy in relation to good cause for failure to participate for the WV WORKS cash assistance program. This policy states in relevant 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.

When the worker determines that the client has good cause for failure to participate for one of the reasons listed in items A through E below, the participant must be placed in the appropriate good cause component.

C. CHILD UNDER 6 / UNAVAILABLE CHILD CARE (TD)

A single parent can prove that appropriate child care is unavailable for his child, under age 6. The client must accept available child care unless it is an unreasonable distance from the individual’s home or work site.

VIII. CONCLUSIONS OF LAW:

- 1) The purpose of this hearing is to determine whether the Department correctly applied a 2nd level sanction against the Claimant which resulted in a 2/3 reduction in her WV WORKS cash assistance benefit for three months.
- 2) Applicable policy provides that an individual is obligated to negotiate and sign a PRC before becoming eligible for WV WORKS cash assistance. He or she is then obligated to abide by the terms and conditions of the agreement in order to maintain eligibility for WV WORKS cash assistance. Failure to comply results in a sanction unless good cause is found.
- 3) The parties agreed that an up-to-date PRC agreement was entered into by the parties at which time the Claimant agreed to participate in ABE classes at [REDACTED] School for a total of eighty-five (85) hours per month in her efforts to obtain a general equivalency diploma (GED). The Department did not present a copy of the PRC for review.
- 4) Policy provides that all hours of participation in activities are to be verified. Timesheets are utilized for providers to verify attendance. The Claimant's August 2011 timesheet from the school shows that she participated for sixty-two (62) hours during the month, which falls short of her required minimum assigned hours of eighty-five (85).
- 5) Policy provides that when individuals do not participate in their assigned activity for the minimum number of assigned hours, a good cause interview is to be conducted prior to the Department applying a sanction to the case. This good cause interview is completed to determine whether the participant has good cause for not meeting his or her assigned hours, and whether the issue can be resolved without applying a sanction to the case.
- 6) The Department conducted a good cause interview with the Claimant. At that time, the Claimant reported that she was going through a lot of problems. There is no documentation to support what these reported problems were; however, the Department documented that it found no good cause. Policy provides that one reason for finding that good cause exists is when a single parent can prove that appropriate child care is unavailable for his or her child, under age 6. Although the Claimant reported child care problems during the hearing, there is insufficient evidence to support that she reported and verified specific problems involving child care at her good cause interview. The evidence supports that the Department was correct in its determination at the good cause interview that no good cause existed.
- 7) The Claimant also reported during her good cause interview that she had been receiving tutoring from an individual at her home. She submitted a letter and a timesheet from the tutor showing that she participated thirty-one (31) hours with the tutor during the month in question. The Department made several attempts to verify that the tutor was affiliated with the school where the Claimant had agreed to participate in ABE classes, but was unable to do so. Additionally, the Department and the Claimant had not discussed and made changes in the PRC agreement for her to utilize a tutor in her home as a means of meeting her participation requirement; therefore, the Department was correct in not counting the tutoring hours toward the Claimant's agreed upon participation of eighty-five (85) hours per month at the school.

- 8) As a result of all the above conclusions, the Department was correct in applying a 2/3 level sanction to this case.

IX. DECISION:

After reviewing the information presented during the hearing, and the applicable policy and regulations, it is the ruling of the State Hearings Office to **uphold** the Agency's decision to apply a 2/3 level sanction to your WV WORKS benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of November, 2011.

**Cheryl Henson
State Hearing Officer**