



**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**

March 8, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 3, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to implement a third sanction against your WV WORKS cash assistance.

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. These regulations provide 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 third offense, the sanction results in an ineligibility for cash assistance for a three month period (West Virginia Income Maintenance Manual § 13.9)

The information which was submitted at your hearing revealed that you did not present good cause for your inability 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 third sanction against your WV WORKS cash assistance.

Sincerely,

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

cc: Erika Young, Chairman, Board of Review  
Larry Fisher, Family Support Specialist

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

-----,

**Claimant,**

**v.**

**Action Number: 10-BOR-2147**

**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 March 3, 2011 on a timely appeal, filed October 25, 2010.

It shall be noted that the hearing was originally scheduled for December 20, 2010 and was rescheduled based on the Claimant not receiving notice of the scheduled hearing due to an incorrect address provided by the Department. The hearing was later rescheduled to January 13, 2011 and was continued based on a request from the Claimant due to her son's scheduled surgery. The hearing was later rescheduled to February 1, 2011 and was rescheduled at the discretion of the State Hearing Officer due to inclement weather.

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 husband  
Larry Fisher, 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 decision to implement a third sanction against the Claimant's WV WORKS cash assistance.

### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual § 13.9

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

#### **Department's Exhibits:**

- D-1 Hearing Summary
- D-2 WV WORKS Personal Responsibility Contract dated August 9, 2010
- D-3 Participant Time Sheet dated September 2010
- D-4 Notice of Decision dated October 12, 2010
- D-5a Hearing Request
- D-5b West Virginia Income Maintenance Manual § 13.9

### **VII. FINDINGS OF FACT:**

- 1) On August 9, 2010, the Claimant, along with her husband, made an application for the WV WORKS cash assistance program. As part of the application, the Claimant completed Exhibit D-2, WV WORKS Personal Responsibility Contract, hereinafter PRC. This exhibit documents that the Claimant signed the agreement and agreed to participate in the following activities:
  - Communicate any and all changes (8/09/10 through 8/09/11)
  - Attend all scheduled appointments (8/09/10 through 8/09/11)
  - Attend GED 2 evenings per week (if day times are available as well. Min 2x weekly.
  - Take TABE [Test of Adult Basic Education] and EHI [Emotional Health Inventory] at local DHHR office 9:30 8/24/10.
  - Return Employer Verification by 2/24/11
- 2) Larry Fisher, Family Support Specialist testified that the Claimant was placed in the General Equivalency Degree or GED component of the WV WORKS program. Mr. Fisher purported that the Claimant was placed in the GED component of the program in order to increase her employability and offer her the possibility of achieving a \$500.00 cash bonus from the WV WORKS program. Mr. Fisher testified that the Claimant related during her application that

she could attend GED evening classes twice weekly on Tuesday and Thursday because her oldest child would be available to assist her husband with child care. Mr. Fisher acknowledged that the Claimant was not given an hourly requirement of participation, because the main objective of the family was to progress forward. Additionally, Mr. Fisher stated that the Claimant's husband submitted a physician statement documenting his inability to meet the assigned work activities and was exempt from participation in the program.

- 3) On October 7, 2010, the Claimant submitted Exhibit D-3, WV WORKS Participant Time Sheet to the Department verifying her participation in the WV WORKS program for the month of September 2010. Exhibit D-3 documents that the Claimant participated for three hours a day on September 2, 7, 9, 16. This exhibit documents that the Claimant was ill and did not participate on the day of September 14, 2010. Additionally, the Claimant was absent from participating in the activity on the dates of September 21, 23, 28, 30, with a reason for the absences listed as "moving." Mr. Fisher explained that the Claimant was required to participate in nine GED classes during the month of September and her submitted time sheet documented attendance in only four of the scheduled classes. Mr. Fisher testified that the Claimant did not communicate her absences prior to submitting her time sheet to the Department and a sanction was implemented against the Claimant for failing to attend her assigned activity.
- 4) On October 12, 2010, the Department issued the Claimant Exhibit D-4, Notice of Decision. This exhibit documents in pertinent part:

ACTION: Your WV WORKS/WVEAP benefits will stop. You will not receive this benefit after October 2010.

REASON: A third-level sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC).

A sanction will be applied to your assistance group effective 11/10. This is the third or subsequent sanction and will continue for 3 months or until compliance.

You and your family will be ineligible for WV WORKS benefits for 3 months.

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 10/22/10- at 9:45 at the office address listed above.

- 5) A good cause hearing was scheduled with the Claimant on October 22, 2010, in order to determine if the Claimant had good cause for failing to participate in her required activity. Mr. Fisher purported that the Claimant did not supply sufficient information to lift the imposed sanction and the sanction remained in place for the three month period of November 2010 through January 2011. It shall be noted that the sanction had expired prior to the commencement of the scheduled fair hearing.

- 6) The Claimant purported that her household situation requires her to participate in GED evening classes. The Claimant testified that she was attending GED classes and missed time in the month of September because the household relocated to a new residence. The Claimant indicated that the household had to relocate from their mobile home to a larger home and there was only one vehicle available to the household and received no assistance from other individuals to aid in the relocation. The Claimant stated that she was unaware that she was required to phone her worker or the GED instructor to inform them of her absence for class. The Claimant's husband indicated that they had phoned the Department to inform their worker that they were in the process of relocating, but did not receive a return phone call until days later. The Claimant's husband was unaware of the exact dates in which the household had contacted the Department. Additionally, the Claimant stated that she continued to progress toward her goal of achieving her GED after the sanction and has since become employed.

Mr. Fisher indicated that he was aware that the Claimant's needed to relocate, as he completed supportive services payments to assist the household with the relocation, and that he returned all phone calls to the household a few days later. Mr. Fisher stated that a typical two-parent household would require a WV WORKS participation agreement of thirty-five weekly hours. Due to the household's lack of child care, the Claimant was required to participate in an activity for two days a week. Mr. Fisher acknowledged that the household's circumstances have remained unchanged since their initial application.

- 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.

1<sup>st</sup> Offense - 1/3 reduction in the check amount for 3 months.

2<sup>nd</sup> Offense - 2/3 reduction in the check amount for 3 months.

3<sup>rd</sup> 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. Sanctions are imposed in the form of benefit reductions to the individuals

WV WORKS benefits. The penalty for a first sanction results in a one-third reduction in benefit, the penalty for a second sanction results in a two-thirds reduction in benefit, and the penalty for all third and subsequent offenses is an ineligibility of WV WORKS assistance for three months. Additionally, policy stipulates reasons for granting good cause for failing to participate with the WV WORKS program include death or illness of a spouse, parent, or child, the minimum suitability standards for the specific activity are not met, or the 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.

- 2) Evidence and testimony presented during the hearing process revealed that the Claimant completed a Personal Responsibility Contract (PRC) and agreed to attend evening General Equivalency Degree (GED) classes two times a week. The Department exhibited a cooperativeness to accommodate the Claimant and her household based on its current circumstances (lack of child care), by lessening the participation agreement and scheduling any participation in the evening hours. Evidence demonstrates that the Claimant was absent from her required participation for a two week time frame and was absent for five of nine scheduled GED classes. Additionally, the Department provided the Claimant an opportunity to establish good cause. The Claimant's excessive absences from her work activity are unreasonable considering the accommodations the Department has made to facilitate the household circumstances. The basic reasoning for the Claimant's failure to comply with the requirements of her PRC was due to the household relocating. This reasoning does not constitute good cause; therefore, the Department was correct in its decision to sanction the Claimant for failing to cooperate with her PRC.

**IX. DECISION:**

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

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of March, 2011.**

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**Eric L. Phillips**  
**State Hearing Officer**