



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 23, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 21, 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 first (1st) 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 WV 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 first (1st) offense, the sanction consists of 1/3 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 not correct in applying a first (1st) level sanction against your WV WORKS cash assistance benefits based on its determination that you failed to keep an appointment on July 12, 2011.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a first (1st) 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-2197

**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 November 21, 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
Barbara Polen, Department Witness

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 first (1st) level sanction against the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 24.3, 24.13

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments from Department's computer system
- D-2 Copy of Personal Responsibility Contract (PRC) dated January 7, 2011 and February 3, 2011
- D-3 Notification letter dated August 4, 2011
- D-4 WV Income Maintenance Manual Section 13.9
- D-5 Fair Hearing Summary dated November 21, 2011

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant was actively receiving WV WORKS cash assistance when on August 4, 2011, the Department determined that she had not complied with the requirements of her Personal Responsibility Contract, hereinafter PRC; specifically, that she failed to keep an appointment scheduled on July 12, 2011, at 1:00 p.m. The Department sent the Claimant the following notification letter (D-4) which included the following pertinent information:

ACTION: Your WV WORKS/WVEAP will decrease from \$295.00 to \$197.00 effective 09-01-11.

REASON: A first 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).

Your WV WORKS benefit amount before any repayment is taken out will be reduced by 1/3.

This sanction is being applied due to the failure of ----- to meet the terms of the Personal Responsibility Contract by FAILING TO KEEP APPOINTMENT.

We have scheduled a GOOD CAUSE interview for ----- on 08/15/11 at 11:30 at the office address listed above.

- 2) The Department representative, Jason Spence, is a WV WORKS case manager in the [REDACTED] County, West Virginia, Department of Health and Human Resources, hereinafter DHHR, office in [REDACTED] West Virginia. He stated that the Department scheduled an appointment for the Claimant to come to the [REDACTED] DHHR office on July 12, 2011, at 1:00 p.m., to update her PRC. He added that, per case comments (D-1) in the Department's computer system, the Claimant called the Department on July 12, 2011, to reschedule her July 12, 2011 appointment as well as a case review interview which was also scheduled for the same date. Further, he stated that case comments (D-1) show that the Department attempted on one occasion to contact the Claimant by telephone to reschedule the PRC appointment; however the telephone continuously rang and gave no option for the Department to leave a message for the Claimant. The Department did not send the Claimant a new appointment notice for the PRC update interview.
- 3) The evidence shows (D-1, D-5) that the Claimant reported to the [REDACTED] DHHR office 3 days later on July 15, 2011, and that she completed her case review interview at that time; however, the PRC interview did not occur. Mr. Spence explained that because the [REDACTED] DHHR office has assigned certain employees to conduct case reviews and other employees to conduct PRC interviews, it was not possible for the employee who conducted the Claimant's case review interview to conduct her PRC interview as well.
- 4) Mr. Spence stated that the Department imposed, by letter (D-3) dated August 4, 2011, a 1/3 sanction on the Claimant's WV WORKS cash assistance case because she did not keep her PRC appointment on July 12, 2011. He added that the Claimant was notified in the letter (D-3) that a good cause appointment was scheduled for her on August 15, 2011, at 11:30 a.m., to discuss whether the Claimant had good cause for missing her July 12, 2011 appointment. The Claimant did not appear for the August 15, 2011 good cause appointment and the sanction was imposed effective September 2011.
- 5) The Claimant stated that she contacted the Department on July 12, 2011, and notified them that she was unable to keep her appointment for case review and PRC update on that day because she was in class that day taking an exam. She stated that she was told by the Department to come in on July 15, 2011, and that she appeared on that date and completed her case review interview. Case comments (D-1) support her testimony in this regard. She stated that she mentioned to the case worker on that date that she also needed to complete her PRC update interview, and added that the worker told her that she was unable to complete this for her, and that someone from the Department would contact her about another appointment for completion of the PRC update interview. There is no documentation in case comments (D-1)

to support whether this was discussed between the parties. The Department's witness, Barbara Polen, is the case worker who completed the Claimant's case review interview on July 15, 2011. She testified that she has no recollection as to whether the Claimant asked about the need to complete a PRC update interview.

- 6) The Claimant stated that she waited for the Department to contact her and expected that she would receive another appointment notice for the PRC update interview; however, she never received a new appointment notice. She stated that she also did not receive the Department's August 4, 2011 notice (D-3) for the good cause interview; however, the notice (D-3) was addressed correctly with her current address.
- 7) The Claimant contends that she should not be penalized for missing the July 12, 2011 appointment because she called the Department prior to the appointment time and asked that it be rescheduled; and the Department did not reschedule the appointment.
- 8) The Department contends that the Claimant failed to comply with the requirements found on her PRC and that it is appropriate to impose a sanction as a result. Mr. Spence added that although the Claimant called to inform the Department that she could not keep her July 12, 2011 appointment for PRC update, she did not contact the Department for a new interview appointment date. The Department also contends that if the Claimant had appeared for her good cause appointment interview as scheduled on August 15, 2011, the issues could have been reviewed and resolved at that time.
- 9) The evidence shows the Claimant signed a PRC on January 7, 2011, agreeing to "attend all DHHR and BCSE [Bureau of Child Support Enforcement] appointments" and to "maintain 30 hours per week @ school." The PRC also shows that the Claimant understood that if she failed to cooperate and participate in all assignments and activities agreed to that she would be penalized.
- 10) 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.
- 11) West Virginia Income Maintenance Manual section 24.4 states in pertinent part:

LOCAL OFFICE RESPONSIBILITIES IN THE WORK PROGRAM
ASPECT OF WV WORKS
A. CASE MANAGEMENT

To meet the goals of the WV WORKS program, a Worker performs the following activities for WV WORKS activities:

- * Establishes for the client only reasonable and appropriate requirements related to the client's ability to perform tasks on a regular basis, including physical capacity, psychological fitness, maturity, skills, experience, family responsibilities, and place of residence.

12) 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.

9) West Virginia Income Maintenance Manual 24.4 states in pertinent part:

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

VIII. CONCLUSIONS OF LAW:

- 1) The purpose of this hearing is to determine whether the Department correctly applied a 1st level sanction against the Claimant which resulted in a 1/3 reduction in her WV WORKS cash assistance benefit for three months.

- 2) Applicable policy specifies 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 to maintain eligibility for WV WORKS cash assistance. Failure to comply will result in a sanction unless good cause is found.
- 3) The evidence shows (D-2) that an up-to-date PRC agreement was entered into by the parties at which time the Claimant agreed to all appointments with the Department and to attend school 30 hours per week.
- 4) Policy provides that the Department is required to establish only reasonable and appropriate requirements related to the Claimant's ability to perform tasks on a regular basis. The Department required that the Claimant attend school thirty (30) hours per week and also required her to keep all appointments with the Department. When a conflict in the completion of both these activities occurred, the Department was not reasonable in applying a sanction against the Claimant for not keeping her PRC update appointment because she was taking a test at school at the same time of the appointment.
- 5) The Claimant contacted the Department when a conflict occurred in her being able to attend school versus appear for a Department appointment. The Claimant clearly reported that she could not attend the July 12, 2011 Department appointment because she was attending school and taking a test on the date she was also required to appear for the Department appointment; she asked that the appointment be rescheduled. The Department did not notify her at that time that she must keep the appointment or be sanctioned.
- 6) The Claimant reported to the Department's [REDACTED] office three days later and completed a case review. The Claimant testified that she asked at this time whether the PRC update interview could also be conducted while she was there. Her testimony is found to be credible. She stated that the Department employee informed her that she was unable to assist her with the PRC update because another employee would need to do that. She stated that she was told that she would be contacted about rescheduling the appointment. Mr. Spence corroborated her testimony in regard to the Department's practices by explaining that one unit within the Department conducts case reviews, and another unit conducts PRC updates. This is consistent with the Claimant's testimony.
- 7) The Department did not reschedule the appointment, and made only one attempt to contact the Claimant by telephone in order to reschedule the appointment.
- 8) The Department sanctioned the Claimant because she did not appear for the appointment as scheduled on July 12, 2011. This sanction is found to be unreasonable because the Claimant reported she would be unable to appear on that date and asked for the appointment to be rescheduled. The Claimant was reportedly attending school and taking a test on that date; by doing so she was complying with another PRC requirement which required her to attend school thirty (30) hours per month.
- 9) As a result of all the above conclusions, the Department was not correct in applying a 1/3 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 **reverse** the Agency's decision to apply a 1/3 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 23rd Day of November, 2011.

**Cheryl Henson
State Hearing Officer**