



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

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

March 16, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 13, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your WV WORKS benefits due to a third sanction.

In arriving at a decision, the State Hearings 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 second offense, the sanction consists of a two-thirds reduction in cash assistance for 3 months. (WV Income Maintenance Manual § 13.9)

The information submitted at your hearing revealed that you had good cause for failing to participate in your CWEP assignment in September 2010 due to medical problems.

It is the decision of the State Hearings Officer to **Reverse** the proposal of the Department to terminate your WV WORKS benefits due to a third sanction.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Beverly Ballengee, Family Support Supervisor

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

-----,

Claimant,

v.

Action Number: 10-BOR-2235

**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 January 13, 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.

It should be noted here that the claimant's benefits under the WV WORKS program have continued pending a decision.

II. PROGRAM PURPOSE:

The Program entitled WV WORKS is administered by the West Virginia Department of Health & Human Resources.

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
Pam Randolph, Family Support Specialist

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

This hearing was held by videoconference.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's proposal to terminate Claimant's WV WORKS benefits is correct.

V. APPLICABLE POLICY:

WV Income Maintenance Manual § 13.9 and 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Personal Responsibility Contract dated July 27, 2010
- D-2 Community Work Experience Program Contract dated July 27, 2010
- D-3 Good Cause Letter dated September 17, 2010
- D-4 Medical Records from [REDACTED] Medical Center and Doctor's Excuses
- D-5 WV Income Maintenance Manual § 13.9

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant applied for WV WORKS benefits and completed a Personal Responsibility Contract (PRC) on July 27, 2010 (D-1). Claimant agreed to participate in the Community Work Experience Program (CWEP) to meet her work activity requirement and was placed at [REDACTED] School as a custodian starting August 17, 2010 (D-2).
- 2) Claimant's CWEP sponsor contacted Claimant's caseworker and advised that Claimant had not reported to work in September 2010. A third level WV WORKS sanction was proposed on September 17, 2010 with a good cause appointment scheduled for September 28, 2010 (D-3).
- 3) Claimant attended the good cause meeting and advised her caseworker that she had been unable to attend her CWEP assignment due to gynecological problems and doctors' appointments for her children. Claimant provided a doctor's excuse for her daughter [REDACTED] for September 20 – 22, 2010, a doctor's excuse for her daughter [REDACTED]

for September 22 – 23, 2010 and a statement from her physician stating “----- is being worked up for severe pelvic pain in my office” dated September 13, 2010 (D-4).

Claimant was advised to submit a current doctor’s excuse with a diagnosis, prognosis and length of her inability to work. Claimant turned in her medical records from [REDACTED] Medical Center from an emergency room visit on September 3, 2010 to her caseworker on September 29, 2010 (D-4).

- 4) Pam Randolph, Claimant’s caseworker, testified that she could not give Claimant good cause for her failure to participate in the work activity in September 2010 based on the information provided. The information provided by Claimant only covered five (5) days in September 2010, none of which indicated that Claimant was unable to work.
- 5) Claimant testified that she went to the emergency room on September 3, 2010 for severe pelvic pain and menstrual bleeding. Claimant stated she was bleeding through a tampon every 30-45 minutes. Claimant stated her pain was so severe; she was initially being evaluated for appendicitis at the hospital. Claimant was prescribed Lortab for pain and Provera to stop the bleeding. Claimant noted this information was documented in the medical records she submitted to her caseworker (D-4).

Claimant testified that she has been having gynecological problems for months which were noted on her PRC (D-1). Claimant saw her physician on September 13, 2010 regarding her condition and provided the excuse. Claimant stated her physician does not give “work excuses” so she was unable to provide a statement indicating how long she would be unable to work. Claimant stated she was unable to work due to the constant bleeding and pain and is still experiencing problems. Claimant stated she may eventually have to have surgery.

- 6) WV Income Maintenance Manual § 13.9 states:

When a member of the AG [assistance group] or non-recipient Work-Eligible Individual does not comply with requirements found on his PRC, a sanction must be imposed unless the Worker determines that good cause exists.

Sanctions are applied in the form of benefits reductions and, for the 3rd or subsequent offense, termination of benefits. The amount of the benefits 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

3rd and All Subsequent Offenses = Ineligibility for cash assistance for 3 months

- 7) WV Income Maintenance Manual § 13.10 states:

Failure or refusal to comply, without good cause, results in imposition of a sanction.

NOTE: To avoid imposition of a sanction due to good cause, the good cause must be established during the advance notice period.

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.

PHYSICAL / MENTAL INCAPACITY

An individual is experiencing a physical or mental health condition or he is suffering from a temporary debilitating injury for which a reasonable accommodation cannot be made. The individual's condition must be reevaluated within the time limits specified by his medical practitioner or at least quarterly. For any period of disability or incapacity that is expected to last longer than 6 months, the case must be submitted to MRT [Medical Review Team] for evaluation. MRT must also approve all individuals claiming permanent and total disability.

VIII. CONCLUSIONS OF LAW:

- 1) Policy holds that a sanction is imposed against an individual's WV WORKS benefits for failure to participate in an assigned work activity unless good cause exists.
- 2) Claimant testified that she did not attend her CWEP assignment in September 2010 at [REDACTED] School due to severe menstrual bleeding and pelvic pain. Claimant not only attended her good cause meeting, but provided medical documentation attesting to her medical condition. It is reasonable that Claimant was unable to perform her duties as a custodian while experiencing uncontrolled menstrual bleeding. Claimant's gynecological problems were also noted on her PRC as a barrier to employment.
- 3) While Claimant should have notified her caseworker that she would be unable to attend her CWEP assignment, Claimant did have good cause for not participating.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of the Department to terminate Claimant's WV WORKS benefits due to a third sanction.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 16th day of March 2011.

**Kristi Logan
State Hearing Officer
Member, Board of Review**