



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

December 15, 2011

-----  
-----  
-----

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held December 13, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your WV WORKS cash assistance eligibility based on the imposition of a third (3<sup>rd</sup>) 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 third offense, the sanction consists of termination 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 third (3<sup>rd</sup>) level sanction against your WV WORKS cash assistance benefits.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to impose a third (3<sup>rd</sup>) 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  
Ben Samms, [REDACTED] DHHR

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

**IN RE:**     -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-2282**

**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 December 13, 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

-----, Claimant's witness – participated by telephone

Ben Samms, Department representative

Michele Harper, Department's 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 third (3<sup>rd</sup>) 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 Excerpt from WV Income Maintenance Manual Section 13.9
- D-2 Excerpt from WV Income Maintenance Manual Section 24.3
- D-3 Excerpt from WV Income Maintenance Manual Section 24.3.C
- D-4 Page 4 of Personal Responsibility Contract signed June 9, 2011
- D-5 Excerpt from WV Income Maintenance Manual Section 13.10
- D-6 Notification letter dated September 14, 2011
- D-7 Individual Case Comments from Department's computer system

**Claimant's Exhibits:**

None

**VII. FINDINGS OF FACT:**

- 1) The Claimant was actively receiving WV WORKS cash assistance on September 14, 2011, when the Department determined that she had not completed her minimum required hours during the month of August 2011 in Adult Basic Education (ABE) class at [REDACTED] Church. The Department representative, Ben Samms, is a Family Support Specialist with the Department, and he stated that the Claimant did not verify her participation in ABE class for the month of August 2011. He added that the Department did not receive a timesheet for her for August 2011 participation.
- 2) The evidence (D-3) shows that the Claimant previously signed a Personal Responsibility Contract (PRC) during June 2011 in which she and the Department agreed that she would participate for a minimum of thirty (30) hours per week by attending an ABE class at the

church to meet her participation requirements. The Claimant agreed to submit timesheets by the fifth (5<sup>th</sup>) of the month.

- 3) The Department sent the Claimant a notification letter (D-6) on September 14, 2011, which informed her that a third offense sanction was being applied to her case for failure to comply with the requirements of the PRC, and that a good cause appointment had been scheduled for her on September 20, 2011, at 2:45 p.m., to determine whether she had good cause for not attending the class during the month of August 2011. The Claimant did not attend the good cause appointment and the sanction was applied effective October 2011. Mr. Samms stated that the Claimant came into the office after the scheduled date for the good cause hearing and reported and verified that she missed the appointment due to a "broken leg".
- 4) The Claimant contends that she attended class for the required hours during August 2011 and that her timesheet was submitted. She stated that she spoke with a Department worker about this timesheet; however, she was unsure of the date and added that it may have occurred during August 2011. She stated that the Department worker, Michele Harper, told her at that time that her timesheet was received. She stated that later she contacted Ms. Harper again because she had not received her travel pay for August 2011 and that Ms. Harper told her that the timesheet was lost.
- 5) Ms. Harper testified that she spoke with the Claimant on August 11, 2011 regarding a timesheet for July 2011; however, she added that she does not recall discussing with the Claimant her August 2011 timesheet. She added that she did not document any telephone contact with the Claimant during September 2011 and that it is her practice to do so. She stated that she does not recall discussing the Claimant's August 2011 timesheet with her. Ms. Harper added that case comments (D-7) show that the Claimant spoke with a supervisor during August 2011 about her June 2011 timesheet that was misplaced; however, she added that there are no case comments regarding any telephone contact with her discussing her August 2011 timesheet.
- 6) It is reasonable that if the Claimant had a discussion with a Department worker regarding a lost August 2011 timesheet that the conversation would have occurred during September 2011 or later since the timesheets are not turned in (D-4) until the month after the participation occurs. There is no written evidence to support that this occurred, and the Claimant's testimony in this regard is unclear as to when a conversation occurred.
- 7) The Claimant's ABE teacher, -----, testified that she recalls the Claimant attended ABE class during August 2011, and that she submitted an August 2011 timesheet to the Department on her behalf sometime around September 5, 2011. She stated that she is able to provide written evidence once she checks her records as to the exact amount of hours the Claimant participated during August 2011. She stated she was unable to do this during the hearing because she was away from her office and participating in the hearing by telephone. The record was left open until December 14, 2011 for submission of this evidence for consideration. As of December 14, 2011, no additional evidence was received to corroborate -----testimony.
- 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 24.3, PARTICIPANT DOCUMENTATION, provides in relevant part:

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

- 11) 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.

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 or until compliance, whichever is later.

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

- 12) West Virginia Income Maintenance Manual Section 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

## **VIII. CONCLUSIONS OF LAW:**

- 1) The purpose of this hearing is to determine whether the Department correctly applied a 3<sup>rd</sup> level sanction against the Claimant which resulted in a termination of 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-4) 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] Church for a total of thirty (30) hours per week in her efforts to obtain a general equivalency diploma (GED). She also agreed to submit timesheets by the 5<sup>th</sup> of the month.
- 4) Policy provides that all hours of participation in activities are to be verified. Timesheets are utilized for providers to verify attendance. The evidence is insufficient to support that the Claimant attended the required hours in ABE class for the month of August 2011. The Claimant's testimony in regard to submission of the timesheet is sketchy as she does not recall dates very clearly, and the ABE teacher's testimony that she attended the class is not supported by verification of attendance by submission of a timesheet or other signed verification. Although the ABE teacher indicated she could submit the document and the record was left open until December 14, 2011, to allow time for her to submit the documentation, it was not received.
- 5) As a result of all the above conclusions, the Department was correct in applying a third (3<sup>rd</sup>) 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 third (3<sup>rd</sup>) 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 15<sup>th</sup> Day of December, 2011.**

---

**Cheryl Henson  
State Hearing Officer**