



**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**

January 27, 2011

Dear -----,

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 14, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to sanction your WV WORKS cash assistance due to your failure to participate in a work activity.

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. For a second offense, the sanction consists of a two-thirds reduction in cash assistance for 3 months. (West Virginia Income Maintenance Manual § 13.9)

The information which was submitted at your hearing revealed that you did not have good cause for failing to complete the assignments of your Personal Responsibility Contract (PRC).

It is the decision of the State Hearing Officer to Uphold the action of the Department to implement a second sanction and a two-thirds reduction to your WV WORKS assistance.

Sincerely,

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

cc: Erika Young, Chairman, Board of Review
-----, FSS

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

-----,

Claimant,

v.

Action Number: 10-BOR-2383

**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 January 14, 2011 on a timely appeal, filed December 6, 2010.

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

-----, Family Support Supervisor

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 sanction the Claimant's WV WORKS assistance due to her failure to comply with the requirements of her Personal Responsibility Contract (PRC).

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 13.9, 13.10, and 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV WORKS Personal Responsibility Contract (PRC) dated October 13, 2010
- D-2 Physician statement from [REDACTED] Health Center
- D-3 Computer printout of "Individual Comments" from Department benefit issuance system dated November 3, 2010
- D-4 Computer printout of case comments from Department's benefit issuance system dated December 10, 2010

VII. FINDINGS OF FACT:

1) -----, Family Support Supervisor testified that the Claimant completed an application for WV WORKS cash assistance on October 13, 2010. As part of the application, the Claimant completed Exhibit D-1, WV WORKS Personal Responsibility Contract, hereinafter PRC. Exhibit D-1, documents that the Claimant signed the agreement and agreed to participate in the following activities:

- Keep all appointments, reviews, etc. with WV WORKS
- Report all changes in home in 10 days
- Have doctor complete medical limitation form this will determine if you need placed in activity
- Start GED class on 10-25-10 @ [REDACTED] County Technical Center, Monday-Friday 8 am-12 pm
- Must complete five consecutive days of participation before WV WORKS Grant [sic] can be approved
- Must complete 85 monthly hrs. starting 11/10, 20 monthly hrs. in 10/10
- Report birth of child, at that time a PRC update will be scheduled
- Take TABE Test on 10/20/10 @ [REDACTED] County Technical Center at 8:30 A.M.
- Time Sheet due by 5th of every month

2) The Department discovered that the Claimant did not complete the requirements of her PRC by failing to attend the scheduled Test of Adult Basic Education or TABE assessment on October 20, 2010. The Claimant provided Exhibit D-2, Physician Statement from Tri-State Women's Health Center to the Department to explain her absence from her required participation, as established in the PRC. Exhibit D-2 documents:

Please exempt the above named patient from community service activities for the remainder of her pregnancy. Due date 12/30/10.

Based on the physician's statement, the Department granted good cause to the Claimant, in regards to her requirement to her failure to complete the General Equivalency Degree (GED) classes and community service participation requirements.

- 3) On October 29, 2010, ----, Family Support Specialist completed an initial home visit with the Claimant. During the home visit, ----discussed the TABE assessment with the Claimant and the Claimant agreed to complete the assessment on November 3, 2010 (Exhibit D-3). ---- testified that the Department was notified that the Claimant failed to complete the rescheduled TABE assessment.
- 4) ----testified that she had conversations with a representative from [REDACTED] Health Center concerning the Claimant's medical limitations listed in Exhibit D-2. Ms. Johnson indicated that she informed the representative of the details of the TABE testing and the length of time that the Claimant was required to participate with the TABE assessment. ----testified that the representative spoke with the physician and informed the Department that there would be no adverse effects to the Claimant's pregnancy if she participated with the TABE assessment. ----stated that she met with the Claimant and rescheduled the TABE assessment and afforded the Claimant the opportunity to complete the assessment at her own convenience. ----purported that the Claimant failed to complete the TABE assessment since her initial WV WORKS application and her assistance was sanctioned due to her failure to complete the requirements of her PRC.
- 5) The Claimant purported that she submitted a physician statement to the Department which indicates that she is unable to participate in any community service activity. The Claimant indicated that ----informed her there was a difference between a community service activity and the TABE assessment and that ----had conversations with her physician concerning her abilities to complete WV WORKS requirements. The Claimant stated that her physician informed ----that she was not to participate in any community service activity. The Claimant stated that ----was informed that she had a low-lying placenta and could not participate with the scheduled TABE assessment. The Claimant stated that on December 10, 2010, her physician informed her that her condition improved and she could complete the assessment. Additionally, the Claimant testified that she delivered her child on December 29, 2010.

- 6) 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.

- 7) 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

D. ASSESSMENT TESTING

In assessing the client's current situation and negotiating the PRC, the Worker must explore family situations, education, work history, skills, aptitudes, attitude toward work, employment potential, possible social services or other support systems including physical, mental and emotional fitness, and the need for support service payments. Form OFA-WVW-3A may be used as an interviewing guide, but the areas explored are not limited to those on the form. Individual circumstances may require varying degrees of exploration. The Worker may include educational assessment testing. Assessment testing consists of the Learning Needs Screening, Mental Health Screening, Test of Adult Basic Education (TABE), and Work Keys. All Work-Eligible Individuals must be scheduled for assessment testing unless one of the exceptions exists under 2,a. Assessment testing is administered by the Department of Education Assessment Specialists. Copies of assessment testing results will be forwarded to the Worker by the Assessment Specialist. However, under certain circumstances the assessment testing (TABE) may be administered by an ABE teacher, or other appropriate agency. An example of this would be expediting placement of a client in an activity such as an ABE class, training, or employment. In this situation the Worker must request a copy of the assessment testing results. Test results must be filed in the client's record.

2. TABE

The purpose of TABE testing is to measure basic academic skills such as reading, math, language, and spelling. All Work-Eligible Individuals are to be scheduled for TABE unless one of the exceptions exists under 2,a below. Based on the elements measured by each test, as found below, the Worker determines which test is more appropriate.

TABE measures reading, math and language skills through real-life and academic questions. Scores are given in grade level equivalents.

Copies of test results are to be requested for participants who have completed TABE, Work Keys, or other similar assessment testing at BEP [sic], ABE [sic], One-Stop Centers, vocational training centers, etc.

a. Exceptions to Completing TABE Testing:

- Client has completed two or more years of college, or is currently attending or is enrolled in the next scheduled term at a college or vocational/technical program which requires a high school diploma or equivalency. Under certain circumstances, however, testing may be warranted if the student has a known learning disability or his basic academic skills are deficient; or
- Client is scheduled to begin a job which will make the family financially ineligible for a monthly WV WORKS check; or
- Other documented conditions exist that prevent effective assessment. These reasons must be documented in the case recording; or
- Client completed TABE or other appropriate assessment testing at another agency, training facility, such as BEP [sic], Workforce WV Center, ABE, or other agency within the previous two years, unless one of the conditions exists under the second and third dashes listed below for repeated assessment testing.

b. TABE Retesting Conditions

- After the initial basic skills assessment (TABE), Work-Eligible Individuals are referred for re-testing under the following conditions:
- Two years have elapsed since the initial assessment;
- More than one year has elapsed and the client wants to enroll in an education or training program; or
- Specific instances have occurred, such as a head injury that could impact learning ability.

8) West Virginia Income Maintenance Manual Section 24.3 documents in pertinent part:

Work-Eligible Individuals describe those whose participation in work activities contributes in determining if the family counts in the calculation of the work participation rate. A Work-Eligible Individual is defined as one of the following:

- An adult or emancipated minor child head-of-household receiving cash assistance

- A non-recipient parent living with a child receiving assistance, unless the parent is excluded for 1 of the following reasons:
 - Minor parent who is not a head-of-household
 - Alien who is ineligible due to his immigration status
 - SSI recipients

In addition, the following Work-Eligible Individuals do not count in the calculation of the work participation rate:

- Parent providing care for a disabled family member living in the home who does not attend school on a full-time basis. Medical documentation must be provided to substantiate the need for the parent to provide this care.
- Single parent with a child under the age of 1 year. This is an exemption for a maximum of 12 months lifetime.
- Families subject to a sanction may be excluded for a maximum of 3 months in a 12 month period.

9) West Virginia Income Maintenance Manual Section 13.10 states in pertinent part:

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.

D. PHYSICAL / MENTAL INCAPACITY (TI – Physical, TM – Mental Health Issues)

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 for evaluation. MRT must also approve all individuals claiming permanent and total disability. See Section 12.3,C for instructions to determine incapacity.

A Work-Eligible female may be placed in the TI component when her doctor places her on bed rest because of a high-risk pregnancy

VIII. CONCLUSIONS OF LAW:

- 1) Policy defines a Work Eligible individual as an adult or emancipated minor child head-of-household receiving cash assistance or a non-recipient parent living with a child receiving assistance. Policy stipulates that all Work Eligible recipients of WV WORKS assistance are to complete a Test of Adult Basic Education or TABE assessment in order to measure basic academic skills such as reading, math, language, and spelling. Policy further stipulates that Work Eligible individuals are exempt from this requirement when the individual has completed two years of college or is currently enrolled in college, the individual has secured employment which would make the household financially ineligible for WV WORKS assistance, the individual has previously completed such assessment in the past two years, or other documented conditions exist which would prevent an effective assessment.
- 2) 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 or until compliance.
- 3) Evidence and testimony presented during the hearing revealed that the Claimant completed a Personal Responsibility Contract (PRC) and agreed to participate with the appropriate General Equivalency Degree (GED) classes and scheduled TABE assessment. Upon completion of her PRC, the Claimant provided a physician's statement which indicated that she was to refrain from community service activities for the remainder of her pregnancy. The Department exempted the Claimant from her participation in GED classes due to the information relayed in the physician's statement. Testimony revealed that the Department ascertained from conversations with the Claimant's physician that the Claimant had no medical limitations in which would prevent her from completing the TABE assessment. Based on such information the Department afforded the Claimant additional opportunities to complete the TABE requirements of her PRC, in which the Claimant failed to complete. The Claimant, by her own admission, indicated that her physician allowed her to complete the TABE test in the latter stages of her pregnancy. The requirements of the PRC, to complete the required TABE assessment, is a reasonable stipulation in the contract in which the Claimant failed to adhere. In absence of any evidence to suggest that the Claimant met the exemption requirements of the TABE assessment as set forth by policy and documentation to support that the Claimant had medical limitations which would inhibit her participation in the required activity, the Department was correct in its decision to implement a second sanction and reduce the Claimant's benefit.

IX. DECISION:

It is the decision of the State Hearing officer to uphold the Department's decision to implement a second sanction to your WV WORKS cash assistance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of January 2011.

Eric L. Phillips
State Hearing Officer