



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

March 29, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 17, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your WV WORKS cash assistance based on the imposition of a third (3rd) 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 West Virginia 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 did not show that it followed policy in applying a third level sanction against your case.

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to impose a third (3rd) level sanction in your WV WORKS case effective February 1, 2011.

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 & HUMAN RESOURCES
BOARD OF REVIEW**

-----,

Claimant,

v.

Action Number: 11-BOR-499

**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 March 17, 2011 on a timely appeal filed January 20, 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

Ben Samms, Department Representative

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 terminate the Claimant's benefits and services through the WV WORKS Program effective February 1, 2011 based on the imposition of a 3rd level sanction.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 1.25, 13.9, 13.10, 24.3, 24.8 & 24.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Income Maintenance Manual Section 13.9
- D-2 WV Income Maintenance Manual Section 13.10
- D-3 WV Income Maintenance Manual Section 24.3
- D-4 Participant Time Sheet for December 2010 and January 2011
- D-5 Employer Contact Form - undated
- D-6 Page from Personal Responsibility Contract dated December 14, 2010
- D-7 WV WORKS Volunteer Job Description form dated December 14, 2010
- D-8 Case Comments from Department's computer system dated February and March 2011
- D-9 Notification letter to Claimant dated January 13, 2011
- D-10 Case Comments from Department's computer system dated December 2010 and January 2011
- D-11 Calendar from [REDACTED] Elementary School for December 2010

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) The Claimant and his wife were actively receiving WV WORKS cash assistance when on December 14, 2010 the wife signed a Personal Responsibility Contract, hereinafter PRC, indicating her agreement to participate in the following assignments/activities:
 - Keep all appointments with DHHR [Department of Health and
 - Human Resources] and BCSE [Bureau of Child Support Enforcement]
 - Report all changes within 10 days
 - Cooperate with BCSE
 - Volunteer at [REDACTED] Elementary
 - Turn in Time Sheets by the 5th monthly
 - Perform [sic] 75 hours a monthly [sic], 18 weekly
 - Contact [REDACTED] [REDACTED] Ex. 104

She also indicated with her signature that she understood if she failed to cooperate by participating with all the assignments/activities listed that she would be penalized.

- 2) The Department contends the Claimant's wife did not report to [REDACTED] Elementary school as agreed, and on January 13, 2011 it sent a notification letter addressed to the Claimant's wife which included the following pertinent information:

ACTION: Your WV WORKS/WVEAP benefits will stop. You will not receive this benefit after January 2011.

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

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 PARTICIPATE WITH WORK PROGRAMS.

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 01/20/11 at 9:30 at the office address listed above.

If this appointment is not kept, the sanction listed above WILL be applied to your benefits.

This notification letter indicates that the Claimant was the individual who failed to meet the terms of the PRC, and does not list his wife as having failed to meet her terms. The good cause interview appointment is also scheduled with the Claimant and not with his wife.

- 3) The Department representative, Ben Samms, is a Family Support Specialist employed with the [REDACTED] County Department of Health and Human Services' office in [REDACTED] West Virginia. He testified that the Claimant and his wife agreed to complete a total of one hundred fifty (150) hours during December 2010. He stated that the Claimant completed seventy three (73) hours by attending (D-4) a SPOKES class, which is a class involving job readiness activities. The supervisor who completed the Claimant's timesheet in December 2010 for this activity indicated that he "is attentive and participates in all activities." The timesheet indicates that the Claimant began attending the class on December 6, 2010 by completing an orientation at the site, and that the class was not available for attendance on December 24th and December 31st of that same month due the scheduled holiday closures. The Claimant was not given attendance credit for these holidays. Mr. Samms stated that the Claimant had fulfilled his PRC obligation, but because the Claimant's wife failed to fulfill her agreed PRC obligation, the total number of hours for the household was not sufficient to meet the one hundred fifty (150) hours required.

- 4) Mr. Samms stated that the Claimant's wife was assigned to complete a job search form and to show that she was seeking employment during the first two weeks of December 2010, and that she returned to the office on December 14, 2010 to update (D-6) her PRC. At that time she agreed to perform community service at [REDACTED] Elementary school. It is unclear as to when this activity was to begin. The PRC does not provide a proposed start date, but lists a contact person.
- 5) Mr. Samms testified that he contacted the school on December 14, 2010 and verified that the Claimant's wife could begin work at [REDACTED] Elementary on December 20, 2010. Case comments from the Department's computer system (D-10) corroborate his testimony; however, testimony from the Claimant supports that his wife was later informed by the contact person that she would be contacted after the Christmas break in order to begin her community service. The Christmas break (D-11) began on December 23, 2010 and continued through the end of the month. It is unclear whether school was in session on December 22, 2010, based on the December 2010 calendar (D-11) provided by the school. The only days the Claimant could have certainly attended this activity in December 2010 were December 20th and 21st, according to the school's calendar (D-11). There were three days during the month that the school was closed due to inclement weather. Mr. Samms stated that if he could determine that the closure was for an actual school "break", he would be able to compute those Christmas break days as days of actual attendance. According to the school's calendar (D-11) the Christmas break began December 24, 2010 and continued through December 31, 2010, encompassing six (6) days of attendance.
- 6) The Claimant's wife's December 2010 job search timesheet (D-5) provides that she contacted three different employers regarding employment. The form provides designated areas for entering the following information for each contact: Date, Time of Contact, Employer/Company Name and Telephone Number, Person Contacted, Type of Contact, Interview Completed – yes/no, Position of Interest, Response of Employer, Time Spent – Hours/Minutes, and Mileage – Round Trip. The form contains space for fourteen (14) entries. There was no evidence presented to describe the exact agreement between the parties as to the specifics of this assignment; therefore it is impossible to determine whether the Claimant's wife complied with the terms.
- 7) The Claimant's wife listed on the job search form that she contacted [REDACTED] by telephone and was told that she needed transportation for the employment. She did not list the date, time of contact, person contacted, employer's telephone number, position of interest, time spent, or mileage for this entry. She also listed that she contacted [REDACTED] by means of a personal visit to the company, and that no interview was completed. She listed the position of interest as Medical Assistant, and provided that the company told her she again needed transportation, but that they would be interested in hiring her. She did not list the date or time of the contact, the person contacted, nor did she list the time spent on the activity or round trip mileage involved. Lastly, she listed that she contacted "NuFace and Laser" by telephone and that she spoke to "-----". She indicated that no interview was conducted and that the position of interest was Medical Assistant. She also indicated that she was told that she does not have the "hours" necessary for this job.
- 8) Mr. Samms testified that he is confident that she returned the job search form during December 2010 but he did not know how to assign creditable hours based on the three contacts she listed.

He stated that he would have to check policy to determine the proper action to take in this situation, and he does not know what the policy says in this regard. He gave the Claimant's wife no credit for the completion of this form.

- 9) The Claimant testified that he came in for his good cause appointment with Mr. Samms as scheduled. His wife was not scheduled to come in for a good cause appointment. He stated that he tried to explain to Mr. Samms, on his wife's behalf, that there was no way she could get all the assigned hours completed in December due to school closures for bad weather and the Christmas break. Mr. Samms testified that he recalls the Claimant telling him at this time that he was unable to make contact with the school, although he did not appear to remember much more about the interview. The Department found no good cause at this meeting and the Claimant subsequently requested a hearing on the matter.
- 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 24.3 states in pertinent part:

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.

- The minimum hours of participation for 2-parent families depend upon the receipt of federally funded child care. The participation requirement may be met by one or both parents. There is no requirement that each parent participate equally.
- When the family does not receive federally funded child care, the minimum number of hours of participation is 150 hour/month or 35 hours/week. When the family receives federally funded child care, the minimum number of hours of participation is 236 hours/month or 55 hours/week.

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.

For Job Search – Limited to entries of 161 hours/month unless the client is able to document more hours. Job Search activities include, but are not limited to, time spent on: travel, making phone calls, interviews, completing employment applications, preparing resumes, etc.

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.

13) 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

14) 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. 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.

- 15) West Virginia Income Maintenance Manual Section 24.8 states in pertinent part:

JOB SEARCH AND JOB READINESS ASSISTANCE (JR)

Job Search and Job Readiness Assistance means the act of seeking or obtaining employment and preparation to seek or obtain employment. This activity must be supervised no less frequently than daily.

Daily supervision does not necessarily mean daily in person. The case manager or other responsible party provides oversight; know what the participant is supposed to be doing and is responsible for ensuring that the participant is actually performing these tasks. Contact may be by phone or electronic where available.

Job Search must be a structured and supervised activity which may include the following:

- Making contacts with employers by phone
- Making contacts in person
- Use of the internet to learn of suitable job openings, applying for jobs, and interviewing for jobs

Note: Travel time to and from job interviews does not count as participation hours. However, the travel time between multiple interviews may be counted as participation.

VIII. CONCLUSIONS OF LAW:

- 1) The purpose of this hearing is to determine whether the Department correctly applied a 3rd level sanction against the Claimant effective February 1, 2011 which resulted in termination of his WV WORKS cash assistance for three months.
- 2) Policy provides that both the Claimant and his wife are obligated to negotiate and sign a PRC before becoming eligible for WV WORKS cash assistance. They are then obligated to abide by the terms and conditions of the agreements in order to maintain eligibility for WV WORKS cash assistance. Failure to comply results in a sanction unless good cause is found. After the first two sanctions have been applied, subsequent sanctions require total case closure for at least three months or until compliance is achieved. There is no disagreement between the parties regarding the level of sanction involved, therefore a third level sanction is found to be applicable in this situation.
- 3) Policy provides that when an individual is assigned to perform a job search activity, the Department is required to provide supervision no less frequently than daily in order to ensure that the activity is being completed properly. This supervision may be done in person, by telephone, or by electronic means.

- 4) Policy also provides that the Department is obligated to schedule a good cause interview appointment with the participant prior to imposing a sanction on the case. In this instance, the Department scheduled the good cause appointment with the Claimant, and not the individual found to be out of compliance. The Claimant's wife is the individual found to be out of compliance. She was not provided a good cause appointment prior to imposition of the sanction. Although the Claimant appeared for the good cause appointment, his wife was not involved and therefore was denied her good cause interview.
- 5) Further, policy provides that participation credit may be given in certain instances for attendance during federal holidays, including Christmas.
- 6) The evidence shows the Claimant's wife entered into an agreement on December 14, 2010 by signing the PRC in which she agreed to complete seventy five (75) hours monthly and eighteen (18) hours weekly of community service at [REDACTED] Elementary school. This activity was assigned during the middle of the month, and there was no specific starting date listed on the PRC for the activity; however, the Claimant did agree to contact the school by telephone regarding a state date.
- 7) The evidence is unclear as to when the Claimant's wife was to begin her assignment at the school; however, according to the evidence, there were only two (2) days possible for her to attend this activity in December 2010 at the school. In the absence of convincing evidence otherwise, the Claimant's testimony in regard to the start date being postponed until after the Christmas break is found to be credible, leaving no available days for the Claimant's wife to participate in her community service at the school in December 2010.
- 8) Additionally, the Claimant's wife also completed a job search form and submitted to the Department in December 2010. She was given no credit for the completion of this activity. There was no evidence presented to determine specifically what her assignment entailed in this regard. She clearly was assigned to complete two (2) weeks job search and submit the form during the month of December 2010. The evidence shows she was involved in job search activities during this period and that she submitted a form substantiating this activity. Although the Department contends that she did not complete the activity properly and that she is not entitled to any credit for hours attended, it submitted no evidence to support this contention. No PRC was produced to indicate the specific agreement between the parties in this regard. Additionally, policy states that the Department is to have daily contact and supervision with the participant during this activity in order to provide oversight of the process. No evidence was presented to show this was done.
- 9) As a result of all the above conclusions, it is clear that the Department did not act according to policy in applying a third level sanction to this case in this instance.

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 third level sanction to your WV WORKS benefits effective February 1, 2011.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of March, 2011.

**Cheryl Henson
State Hearing Officer**