



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

March 30, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 30, 2011. Your hearing request was based on the Department of Health and Human Resources' proposed termination of your WV WORKS benefits due to a 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 Assistance Group or non-recipient Work-Eligible Individual does not comply with requirements found on her Personal Responsibility Contract, a sanction must be imposed unless the Worker determines that good cause exists (West Virginia Income Maintenance Manual, Chapter 13.9).

The information submitted at your hearing revealed that you did not comply with your Personal Responsibility Contract, and failed to establish good cause.

It is the decision of the State Hearing Officer to **uphold** the Department's termination of your WV WORKS benefits due to a sanction.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
John Pelfrey, Family Support Specialist

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

-----,

Claimant,

v.

Action Number: 11-BOR-548

**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 March 30, 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. This fair hearing was convened on March 30, 2011 on a timely appeal, filed January 28, 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
John Pelfrey, Department representative

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

All persons offering testimony were placed under oath.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department was correct to impose a WV WORKS sanction, terminating benefits to the Claimant.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapters 1.25.T; 13.9; 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual, Chapter 24.3
- D-2 WV WORKS Personal Responsibility Contract for -----
- D-3 WV WORKS Personal Responsibility Contract for -----
- D-4 Participant Time Sheet forms for ----- from October 2010 through December 2010
- D-5 Participant Time Sheet forms for ----- from October 2010 through December 2010
- D-6 Notice of WV WORKS sanction and termination dated January 19, 2011
- D-7 West Virginia Income Maintenance Manual, Chapter 13.9
- D-8 Hearing request form

VII. FINDINGS OF FACT:

- 1) John Pelfrey, Family Support Specialist for the Department, testified that the Department notified the Claimant (Exhibit D-6) on or about January 19, 2011, that her WV WORKS benefits would be closed due to a sanction. The notice states, in pertinent part:

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).

The letter additionally provided the specific sanction reason as "FAILING TO ATTEND AN ASSIGNED ACTIVITY," and scheduled an appointment on January 27, 2011 to allow the Claimant to provide good cause for the PRC violation; Mr. Pelfrey testified that this good cause appointment was ultimately held by phone, and good cause was not granted.

- 2) The Claimant and her husband completed Personal Responsibility Contracts (PRC), agreeing to the stated goals of completing EXCEL classes (Exhibits D-2 and D-3). Mr. Pelfrey and the Claimant testified that classes were attended in September 2010. Mr. Pelfrey presented Participant Time Sheet forms (Exhibits D-4 and D-5) to show that the Claimant and her husband did not attend EXCEL classes in October, November, or December 2010.
- 3) Mr. Pelfrey and the Claimant testified that they discussed the missed activity attendance during October, November, and December 2010, and that Mr. Pelfrey agreed that he

- 4) Mr. Pelfrey testified that he had contact, in January 2011, with an employee of [REDACTED] a daycare center. As a result of the conversation with the daycare center employee, Mr. Pelfrey discovered that the Claimant's child was attending daily activities at the facility. He testified that the facility was between the Claimant's residence and the EXCEL class location, and opined that if the Claimant could arrange transportation to the daycare center, the Claimant could arrange transportation to the EXCEL class and attend regularly. This was the basis of his decision to sanction the Claimant's WV WORKS case. He testified that because of prior sanctions, this sanction would be a third-level sanction, resulting in WV WORKS closure.
- 5) The Claimant testified that her stepfather and mother were providing the transportation for her child to attend the daycare center activities. She testified that she they additionally provided the transportation to the EXCEL classes in September 2010, but that after that time, they were "not getting along," and stopped providing transportation to the Claimant and her husband; they continued to be willing to provide transportation for the Claimant's child to the daycare center activities. Mr. Pelfrey testified that the Claimant resides in a rural area without public transportation. Transportation is listed as a challenge or barrier on the PRC for both the Claimant and her husband (Exhibits D-2 and D-3).
- 6) The Claimant testified regarding her complaints with the EXCEL classes for the month she did attend – September 2010. She stated that the class would frequently dismiss early, leaving her and her husband waiting for their ride, and without activity hours credited.
- 7) The West Virginia Income Maintenance Manual, Chapter 1.25.T, provides for the implementation of sanctions, as follows, in pertinent part:

Failure, without good cause, to adhere to the responsibilities or any tasks listed on the PRC after signature, results in imposition of a sanction against the AG. No sanction may be imposed for failing to adhere to any provision that is not specifically addressed on the PRC at the time the failure occurred. See Section 13.9 for information about sanctions.
- 8) The West Virginia Income Maintenance Manual, Chapter 13.9, defines sanctions as follows (emphasis in original):

A. DEFINITION OF SANCTION

NOTE: Once a sanction has been imposed, it cannot be stopped until the appropriate time has elapsed.

Sanctions are applied in the form of benefit reductions and, for the 3rd or subsequent offense, termination of benefits. The amount of the benefit 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. If the case is in a 1/3 reduction when the 2nd sanction is applied, the 2/3 reduction is applied to the benefit amount the client would be eligible to receive, prior to recoupment; if it was not already reduced by 1/3.

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

- 9) The West Virginia Income Maintenance Manual, Chapter 13.10, discusses good cause as follows, in pertinent part (emphasis added):

The Worker must determine whether or not the client is meeting the requirements, attempting to comply to the best of his ability, understands the requirements, and the sanction process. The Worker has considerable discretion in imposing a sanction. The Worker may determine that the requirement was inappropriate based upon additional assessment. An appointment to update the PRC and place the individual in another component must be scheduled as soon as possible. In addition, the Worker may determine that not applying a sanction in a particular situation provides more motivation for future participation than the imposition of a sanction. However, once a sanction has been imposed, it cannot be stopped, until the appropriate time has elapsed.

VIII. CONCLUSIONS OF LAW:

- 1) Policy for the WV WORKS program requires cooperation with the PRC, unless good cause is established. The Claimant's PRC required EXCEL class attendance, and after initial participation, the Claimant failed to attend for at least three consecutive months. Good cause was initially granted due to lack of transportation, but was reconsidered after discovery of the availability of transportation for the Claimant's child to regular daycare center activities, and the Claimant's case was subsequently sanctioned. The Claimant explained that family members were willing to provide transportation for her child, but not for her and her husband. Nevertheless, the Claimant agreed to the PRC requirements and failed to resolve her transportation issues after three months. It was reasonable for the Department worker to believe that the Claimant was not attempting to comply with the PRC requirements to the best of her ability. The determination by the Department that the Claimant did not establish good cause is correct.
- 2) Policy for WV WORKS additionally requires sanctions against WV WORKS benefits when PRC non-compliance is without good cause. The Department was correct to apply a third-level sanction terminating the WV WORKS benefits of the Claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate the WV WORKS benefits of the Claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of March, 2011.

Todd Thornton
State Hearing Officer