



**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**

March 22, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 14, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to implement a third sanction against your WV WORKS cash assistance.

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 third offense, the sanction results in an ineligibility for cash assistance for a three month period (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 comply with requirements of Personal Responsibility Contract (PRC).

It is the decision of the State Hearings Officer to Uphold the action of the Department to implement a third sanction against your WV WORKS cash assistance.

Sincerely,

Eric Phillips
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Cheryl McWhorter, FSS

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

-----,

Claimant,

v.

Action Number: 11-BOR-588

**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 March 14, 2011 on a timely appeal, filed December 27, 2010.

It should be noted here that the Claimant's benefits under the WV WORKS program continue at the previous level of determination pending a decision from the State Hearing Officer.

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
Cheryl McWhorter, Family Support Specialist

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 implement a third sanction against the Claimant's WV WORKS cash assistance.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 13.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Summary
- D-2 WV WORKS Personal Responsibility Contract Self-Sufficiency Plan Part 2 of 2 dated August 13, 2010
- D-3 Participant Time Sheets dated November, 2010
- D-4 Computer printout of Transaction History for Electronic Benefits Transfer (EBT) card
- D-5 West Virginia Income Maintenance Manual Chapter 13.9
- D-6a Notice of Decision dated December 10, 2010
- D-6b Notice of Pre-Hearing Conference dated January 6, 2011

VII. FINDINGS OF FACT:

- 1) On August 13, 2010, the Claimant completed Exhibit D-2, Personal Responsibility Contract, hereinafter PRC, as a requirement of the WV WORKS program. This exhibit documents that the Claimant signed the contract agreeing to participate in the following activities:
 - Continue as SPOKES volunteer 8/16/10 through 12/31/10
 - Submit time sheets SPOKES [sic]-weekly
 - Submit GED certificate for bonus by 8/31/10
 - Keep all scheduled appointments with WORKS, Child Support, and other referred agencies-ongoing
 - Report all changes immediately to worker-ongoing
- 2) Ms. Cheryl McWhorter, Family Support Specialist, hereinafter FSS, testified that another FSS completed the Claimant's initial PRC and she became the Claimant's case manager effective November, 2010. Ms. McWhorter indicated that the Claimant, as an initial recipient of WV WORKS, completed the Strategic Planning in Occupational Knowledge for Employment and Success, hereinafter SPOKES, job readiness course. Upon completion of the job readiness course, the Claimant was placed as a volunteer at the SPOKES site until December 31, 2010, in order to meet the participation requirements of the program.
- 3) Ms. McWhorter purported that the Claimant was required to participate as a volunteer with the SPOKES program for 128 monthly hours. Ms. McWhorter provided Exhibit D-1, Participant Time Sheets dated November, 2010 which documented 19.5 hours of participation for the month in question. Additionally, this exhibit notes a lack of transportation as the reason for

absence for the dates of November 1, 8, 9, 10, 15, 16, 18, and 30. Ms. McWhorter indicated that the Claimant did not advise her directly of the transportation issues, but phoned the SPOKES instructor to explain the reasoning for her absences from the participation assignment.

- 4) On December 9, 2010, Ms. McWhorter completed a home visit with the Claimant. During the visit, the Claimant informed Ms. McWhorter that her mother was placed on a different work schedule and could no longer provide her with transportation to the SPOKES participation assignment. During the home visit, Ms. McWhorter informed the Claimant that she would need to make other transportation arrangements in order to attend her assigned activity.
- 5) On December 10, 2010, Ms. McWhorter removed the Claimant from the SPOKES participation site and placed a third sanction on the Claimant's WV WORKS cash assistance. On December 10, 2010, the Claimant was issued Exhibit D-6a, Notice of Decision which documents in pertinent part:

Action: Your WV WORKS/WVEAP benefits will stop. You will not receive this benefit after December 2010.

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

The following individuals are ineligible. -----[sic] -----.

A sanction will be applied to your assistance group effective 1/11. This is the third or subsequent sanction and will continue for 3 months or until compliance.

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 attend an assigned activity.

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 12/20/10 at 10:15 at the office address listed above.

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

Ms. McWhorter stated that the Claimant failed to appear for her good cause appointment, scheduled for December 20, 2010, and the sanction remained in effect. The Department scheduled a pre-hearing conference on January 18, 2011, in which the Claimant failed to appear.

- 5) The Claimant did not dispute any of the facts presented by the Department and indicated that she stopped attending her participation agreement when her mother was unable to provide her with transportation. The Claimant indicated that she wants to abide by the rules of the WV

WORKS program, but her transportation situation prohibits her from meeting the requirements of the program and locating employment. The Claimant stated that her case worker had changed when she started volunteering with her SPOKES assignment and she was unsure of her new case worker until the home visit of December 9, 2010, when she met Ms. McWhorter. The Claimant's testimony regarding her good cause appointment was unclear as she initially stated that she did not receive notice of the scheduled appointment and later indicated that she did not receive the notice timely. The Claimant cited her lack of transportation as the reasoning for her absence from the pre-hearing conference.

6) West Virginia Income Maintenance Manual §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.

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

7) West Virginia Income Maintenance Manual §13.10 states in pertinent part:

All mandatory Work-Eligible Individuals must be placed into a relevant and a current component for tracking and monitoring purposes on approval date. The participant must remain in that component whether or not they are working, cooperating, or sanctioned until either the case is closed or the Case Manager and participant agree to change the component. Not meeting participation requirements or being sanctioned are not reasons to disenroll the participant from their assigned component(s). Some reasons for granting good cause for temporarily not meeting participation requirements are life events or problems such as, but not limited to:

- The death of a spouse, parent, child, or stepchild.

- In accordance with the Family and Medical Leave Act (FMLA) of 1993, an acute, life threatening illness of a spouse, parent, or child that requires the client's immediate attention. This does not include individuals who are exempt from participation due to caring for a disabled family member as outlined in section 13.8.

- The minimum suitability standards for the specific activity are not met. See Sections 24.5 – 24.13 for minimum requirements. If none are listed for the activity, the Worker must determine if the activity placed unreasonable requirements on the client. Individuals granted good cause for this reason must be scheduled an appointment or home visit to review the situation and possible PRC update.

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.

- The parent, an included non-parent caretaker, or a non-recipient Work-Eligible Individual quits employment or fails to participate in his assigned activity due to enrollment and full-time attendance in school, training, or an institution of higher learning. The PRC must be updated and these individuals should be placed in the VT, AB, or CL components as soon as possible.

....

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. See Section 6.3, Items D and E. A Worker generated letter from RAPIDS or a manual letter, DFA-WVW-NL-1 is used.

Additionally, West Virginia Income Maintenance Manual Chapter 13.10.E provides “Other Good Cause Reasons” for failing to participate in an activity which states, in pertinent part:

There is no transportation currently available to the client and all possible sources of transportation have been explored. He must accept appropriate available transportation in the community.

VIII. CONCLUSIONS OF LAW:

- 1) 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. Furthermore, policy stipulates that the worker has considerable discretion when implementing a sanction and must determine whether or not the individual is meeting the

requirements, attempting to comply within their abilities, understands the requirements, and the sanction process.

- 2) As a recipient of WV WORKS cash assistance, the Claimant was required to volunteer hours of participation, in order to meet the work requirements of the WV WORKS program. The Claimant signed and completed a Personal Responsibility Contract and agreed to participate with the program and report all changes immediately to the FSS. The Claimant failed to meet the majority of her participation requirement due to a lack of transportation, which she related to her instructor and the FSS prior to the implemented sanction. The FSS informed the Claimant to seek other arrangements for transportation and afforded the Claimant an opportunity to establish good cause on the sanction on two different opportunities. Policy allows for a temporary good cause exemption from the participation requirement when transportation is unavailable to the individual and all possible sources of transportation have been explored. Testimony failed to establish whether or not all possible sources of transportation had been explored by the Claimant; therefore, good cause for lack of transportation cannot be granted and the Department's decision to implement a third-level sanction is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to implement a third level sanction to the Claimant's 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 March, 2011.

**Eric L. Phillips
State Hearing Officer**