



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

May 4, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 28, 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  
Linda Ashworth, Family Support Specialist

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

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**Claimant,**

**v.**

**Action Number: 11-BOR-647**

**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 May 4, 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 April 28, 2011 on a timely appeal, filed February 22, 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  
Linda Ashworth, 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 Signature page of a Personal Responsibility Contract, dated October 25, 2010
- D-2 West Virginia Income Maintenance Manual, Chapter 1.25; Chapter 13.9
- D-3 Notice dated February 16, 2011

**VII. FINDINGS OF FACT:**

- 1) Linda Ashworth, Family Support Specialist for the Department, testified that the Department notified the Claimant (Exhibit D-3) on or about February 16, 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 FEBRUARY 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 PARTICIPATE WITH WORK PROGRAMS" and scheduled an appointment on February 22, 2011 to allow the Claimant to provide good cause for the PRC violation. The Claimant appeared for this appointment, but Ms. Ashworth testified that good cause was not established.

- 2) The Personal Responsibility Contract (PRC) (Exhibit D-1) was signed by the Claimant and Ms. Ashworth on October 25, 2010. This document lists required assignments or activities, and includes the requirement stating, "TIMESHEETS DUE BY 2<sup>ND</sup> WORKING DAY EA MONTH."

- 3) Ms. Ashworth testified that the January 2011 timesheet, due by the second working day of February 2011, was not received on time. Ms. Ashworth and the Claimant testified that Ms. Ashworth made a phone call to the Claimant to remind her that the timesheet was due. The Claimant testified that she did not submit her timesheet on the day of this phone call, and that when she did ultimately submit the form, it was late.
- 4) The Claimant testified that, at the time this form was due, she was recovering from a recent surgery and was under physician's orders to not drive. She was still under the physician's orders when she came to the Department office in Point Pleasant, WV, to turn in the timesheet. She testified that she submitted this form to the receptionist, and did not see him "date stamp" the document before she left.
- 5) Ms. Ashworth testified that the timesheet was not received, and that the mail log was reviewed and the Claimant's name was not found. Ms. Ashworth testified that this mail log would list any incoming documents, including those submitted at the front window to the receptionist.
- 6) The Claimant testified that she brought her timesheet to the office in person because she felt that mailing it was unreliable. She testified that she was concerned that if she mailed the timesheet, it might be lost.
- 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:

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. There is no dispute that the Claimant's PRC required timely submission of monthly timesheet forms. The Department representative testified that the Claimant's January 2011 timesheet was not received. The Claimant asserted she submitted this form in person, and did so because she did not trust the mail, but did not wait for the receptionist to enter the document on a mail log in her presence, or for a receipt; however, dispute over the submission and receipt of the timesheet itself addresses only one aspect of the PRC requirement for timely submission, and the Claimant testified that the document was overdue at the time she provided it. The Claimant failed to comply with a PRC requirement.
- 2) Policy for WV WORKS additionally requires sanctions against WV WORKS benefits when PRC non-compliance is without good cause. The Claimant proposed medical reasons as good cause for not turning in her timesheet by the agreed deadline; however, the same medical reasons were in effect when she testified she ultimately did provide the form. The medical reasons did not prevent mailing the form; only the preference of the Claimant did so. The Claimant failed to establish good cause for PRC non-compliance. 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 May, 2011.**

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**Todd Thornton  
State Hearing Officer**