



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

April 27, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held April 22, 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 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. 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 present good cause for your inability to comply with the requirements of your Personal Responsibility Contract.

It is the decision of the State Hearing Officer to Uphold the action of the Department to implement a third sanction against your WV WORKS cash assistance and you will be ineligible to receive cash assistance for three (3) months.

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Cindy Myers, Family Support Supervisor

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

-----,

Claimant,

v.

Action Number: 11-BOR-743

**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 April 22, 2011 on a timely appeal, filed March 11, 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

-----, Claimant's witness

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

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapters 13.9, 13.10

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Reprint of Personal Responsibility Contract (pages 3-4) unsigned
- D-2 West Virginia Income Maintenance Manual Chapter 1.25
- D-3 West Virginia Income Maintenance Manual Chapter 13.9
- D-4 Prescription Pad Note from Laura Nelph, M.D. dated February 18, 2011
- D-5 Personal Responsibility Contract (pages 1-2)
- D-6 Power point slide entitled "How to avoid a Sanction"

VII. FINDINGS OF FACT:

- 1) Cindy Myers, Family Support Supervisor testified that the Claimant applied for WV WORKS cash assistance on January 5, 2011. During the Claimant's application for benefits, she reported that she had not been employed with the [REDACTED] Manor since December 23, 2010 because of training issues. Ms. Myers indicated that the Department verified the Claimant's unemployment with the [REDACTED] Manor and approved the Claimant for a partial month WV WORKS payment for January, 2011.
- 2) Ms. Myers testified that the Claimant completed Exhibit D-1, Personal Responsibility Contract, hereinafter PRC, as part of her application for WV WORKS cash assistance. It shall be noted that the presented documentation is a reprint of the original documentation. The Claimant acknowledged during the hearing that the exhibit reflected the same information as the original document. Exhibit D-1 documents the Claimant's assigned activities for the WV WORKS program as:

Assignment/Activity	Begin Date
Notify Worker of any changes in 10 days	1/3/2011-N/A
Keep all scheduled appointments, Int. [sic]	1/3/2011-N/A
Minimum of 128 Hours per month in work activity	1/3/2011-N/A
Have work activity/employment verified	1/3/2011-1/14/2011
Time sheets due by 5 th of each month	1/3/2011-N/A

This exhibit also documents the Claimant's anxiety issues as a challenge or barrier to her self-sufficiency. According to Ms. Myers, the Claimant did not indicate during her application that her health issues prohibited her from gaining employment or participating with the program.

- 3) On February 2, 2011, the Claimant's WV WORKS assistance was sanctioned because she failed to verify her work activity. Ms. Myers testified that a good cause appointment was scheduled for the Claimant on February 14, 2011. Subsequently, the Department could not complete the good cause appointment and rescheduled the appointment as a home visit with the Claimant on February 28, 2011. At the appointment, the Claimant reported that she had medical issues and presented Exhibit D-4, Prescription Pad from [REDACTED] M.D., which documents the Claimant's inability to work due to medical illness for the dates of February 18, 2011 through June 18, 2011. Ms. Myers explained that the documentation did not address the Claimant's failure to obtain a work activity in January, 2011 and that the Claimant failed to contact the worker prior to the timeframe listed in the PRC to inform the Department of her circumstances concerning her inability to locate a work activity.
- 4) On March 3, 2011, Ms. Myers completed a pre-hearing conference with the Claimant. Ms. Myers testified that she supported the actions of the worker to sanction the Claimant's assistance since the Claimant failed to report her inability to work in the timeframe of January 14, 2011 to February 28, 2011. Ms. Myers presented Exhibit D-5, Personal Responsibility Contract pages 1 and 2 to demonstrate the requirement of the WV WORKS recipient to keep in contact with the Department. Exhibit D-5 documents the client's responsibilities of the WV WORKS program in pertinent part as:

I will report changes in my life situation as required on the Rights and Responsibilities section of my application for assistance. Changes may include, but are not limited to, a change in address, a change in telephone number, someone moving in/out of my home, getting/losing a job, changes in work hours, and any changes in income earnings or assets.

Ms. Myers stated that the Claimant has received WV WORKS assistance on different occasions since 2006 and is familiar with the requirements of the program.

- 5) The Claimant testified that she suffers from anxiety issues which have been ongoing for the last five years. She stated that she is currently on prescribed medications and has been trying to work with different organizations to control her medical issues. The Claimant purported that she can return to her employment with the Pendleton Manor, but her doctors have placed her off of work until June for "relaxation." The Claimant stated that when she lost her employment she went into a "hole" and applied for WV WORKS assistance to "relax and get her head on straight". The Claimant related that she did not contact the Department and report her work activity or relate her health issues because she was in a "hole" and spent the majority of that timeframe sleeping on her couch and contemplated suicide. The Claimant testified that after she met with her worker she was required to bring in a physician's note (Exhibit D-4) concerning her condition and complied with the Department's request.
- 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.

- 8) West Virginia Income Maintenance Manual Chapter 13.10 E “Other Good Cause Reasons” documents in pertinent part:

PHYSICAL / MENTAL INCAPACITY

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.

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. A penalty for a third-level sanction results in an ineligibility for WV WORKS cash assistance for a three month period. Policy lists specific circumstances in which the recipient may be granted good cause for the infraction and 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. Policy notes that the worker has considerable discretion when imposing the sanction and a temporary exemption can be granted when the individual is experiencing a physical or mental health condition for which a reasonable accommodation cannot be made.
- 2) During the negotiation of the PRC, the Claimant indicated anxiety issues that would not prevent her from engaging in the participation requirements of the program. The evidence reveals that the Claimant was in violation of her PRC when she failed to submit a work activity by January 14, 2011 and failed to contact the worker in order to provide information concerning her circumstances. By failing to submit the appropriate documentation or contact her worker, the Claimant did not demonstrate a reasonable attempt to comply with the

assignments or activities before the implementation of a sanction. As an attempt to establish good cause for the sanction, the Claimant provided verification from her physician which related mental incapacity issues that suggested an inability of the Claimant to engage in a work activity for the timeframe of February 18, 2011 to June 18, 2011. However, the physician's documentation fails to verify the Claimant's inability to engage in a work activity for January, 2011, the timeframe in question. The issue before the Board of Review is whether or not the Department was correct in its decision to implement a sanction against the Claimant for her failure to report a work activity by January 14, 2011. In the absence of any evidence which documents an inability to engage in a work activity during the timeframe in question a temporary exemption for good cause cannot be granted.

- 3) The Department's decision to implement a third sanction for failing to adhere to the requirements of the PRC is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the action of the Department to implement a third sanction against the Claimant's WV WORKS assistance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ day of April, 2011.

Eric L. Phillips
State Hearing Officer