



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.

Earl Ray Tomblin
Governor

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

May 25, 2011

c/o -----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 12, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to reduce your WV WORKS benefits based on the imposition of first and second program sanctions.

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 benefit group fails to 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 first offense, the sanction consists of a 1/3 reduction in the assistance check for three months. For a second offense, the sanction consists of a 2/3 reduction in the amount of the assistance check for three months. When two or more offenses - by the same individual or by different individuals - occur prior to the worker's having mailed the advance notice to the client, it is treated as if only one offense has occurred. Even though all offenses must be addressed in the client notification, only one sanction is imposed. (West Virginia Income Maintenance Manual Sections 1.25 and 13.9)

Information submitted at your hearing demonstrates that you were non-compliant with a requirement specifically listed on your Personal Responsibility Contract and should have received a first sanction in regard to your WV WORKS benefits. However, evidence presented during the hearing is insufficient to justify the application of a second, concurrent WV WORKS sanction.

It is the decision of the State Hearing Officer to **uphold** the Department's application of a first sanction - and to **reverse** the Department's action to apply a second sanction - to your WV WORKS case.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Stephanie Hurst, FSS, DHHR

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

-----,

Claimant,

v.

**Action Numbers: 11-BOR-758
11-BOR-1212**

**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 May 12, 2011 on a timely appeal filed February 7, 2011 and received by the Hearing Officer on March 22, 2011. The hearing was originally scheduled for April 19, 2011, but was rescheduled at the request of the Claimant.

It should be noted that the Claimant is receiving continued benefits pending a hearing decision.

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
Stephanie Hurst, Family Support Supervisor, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 action to reduce the Claimant's benefits through the WV WORKS Program based on the application of first and second sanctions.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.25, T and 13.9

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 West Virginia Income Maintenance Manual Sections 1.25, T and 13.9
- D-2 Notices of Decision dated January 28, 2011 and January 31, 2011
- D-3 WV WORKS Personal Responsibility Contract signed November 9, 2010
- D-4 Participant Time Sheets for November and December 2010

Claimant's Exhibits:

- C-1 Statement from -----dated May 12, 2011

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of WV WORKS benefits and signed a Personal Responsibility Contract (D-3) on November 9, 2010, agreeing to complete all scheduled work hours at [REDACTED] International.
- 2) DHHR Family Support Supervisor Stephanie Hurst testified that the Department placed two sanctions on the Claimant's WV WORKS case effective March 2011 based on failure to attend her assigned work activity and discharge from employment at [REDACTED]. No information was provided concerning the date/dates on which the Family Support Specialist was notified of the Claimant's failure to attend her activity and her employment termination.
- 3) The Claimant was sent Notices of Decision on January 28, 2011 and January 31, 2011 (D-2) informing her of the sanctions and setting a good cause appointment for February 4, 2011. The notices informed the Claimant that her WV WORKS benefits would decrease from \$296 to \$99 effective March 2011 based on imposition of the concurrent sanctions. The Claimant appeared for the good cause appointment, however, good cause was not granted by the Family Support Specialist.
- 4) The Claimant testified that she had no set schedule at [REDACTED] and provided a letter (C-1) from a co-worker, -----, which states, "When we (me & [REDACTED]) worked at [REDACTED] [sic]- we were not given a 'set' schedule." The Family Support Supervisor provided Participant Time Sheets (D-4), which indicate that the Claimant completed 45 work hours after beginning work at [REDACTED] in mid-November 2010 and completed the required 85 hours in

December 2010, however, no hours were completed in January 2011. The Claimant testified that she had planned to work seven, 12-hour days at [REDACTED] in January 2011 to obtain the majority of her work hours for the month.

- 5) Policy found in West Virginia Income Maintenance Manual Section 1.25, T (D-1) states that the PRC form (DFA-PRC-1) is a contract between the adult or emancipated minor members of the WV WORKS Assistance Group and the worker.
- 6) West Virginia Income Maintenance Manual Section 13.9, A (D-1) states that when a member of the benefit group does not comply with requirements found on his PRC, a sanction must be imposed unless the worker determines that good cause exists. Sanctions are applied in the form of benefit reductions and include: 1st Offense- 1/3 reduction in the check amount for three months; 2nd Offense- 2/3 reduction in the check amount for three months; and 3rd Offense and all subsequent offenses-Ineligibility for cash assistance for three months.
- 7) West Virginia Income Maintenance Manual Section 13.9, B states:

CONCURRENT SANCTIONS

When an additional offense for the same or a different requirement occurs during a sanction period, the next level of sanction is imposed, after proper notification. The client must also be given the opportunity to establish good cause, regardless of the length of time remaining for the sanction that is already in effect. Sanctions may, therefore, run concurrently.

When 2 or more offenses, by the same individual or by different individuals occur prior to the Worker's having mailed the advance notice to the client, it is treated as if only one offense has occurred. Even though all offenses must be addressed in the client notification, only one sanction is imposed. However, if an additional offense, by the same individual or by a different individual(s), occurs after the Worker has mailed the client notification of the preceding offense, an additional sanction may be imposed after proper notification and the opportunity to establish good cause.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that when a member of the WV WORKS Assistance Group fails to comply with the requirements found on his or her Personal Responsibility Contract, a sanction must be imposed unless the worker determines that good cause exists. The penalty for a first offense is a 1/3 reduction in the assistance check for three months, and the penalty for a second offense is a 2/3 reduction in the assistance check for three months. When two or more offenses - by the same individual or by different individuals - occur prior to the

worker's having mailed the advance notice to the client, it is treated as if only one offense has occurred. Even though all offenses must be addressed in the client notification, only one sanction is imposed

- 2) The Claimant signed a Personal Responsibility Contract in November 2010, agreeing to complete all work hours at [REDACTED] While the Claimant failed to complete her January 2011 work hours and employment was terminated, no information was provided regarding the date/dates on which the [REDACTED] representative informed the Family Support Specialist of the Claimant's non-compliance/termination. Therefore, evidence is insufficient to determine whether the second, concurrent sanction should have been applied.
- 3) As the Claimant was non-compliant with requirements listed on her Personal Responsibility Contract, the Department acted correctly in imposing a first sanction on her WV WORKS benefits. Information provided during the hearing is insufficient to determine whether the imposition of a second sanction was appropriate.

IX. DECISION:

The Department's action to apply a first sanction to the Claimant's WV WORKS benefits is **upheld**. The Department's action to apply a second sanction to the Claimant's WV WORKS case is **reversed**.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of May 2011.

Pamela L. Hinzman
State Hearing Officer