



**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**

June 1, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 31, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to implement a first 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 first offense, the sanction will result in a one-third reduction in benefits for a period of three months (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 failure 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 first sanction against your WV WORKS cash assistance.

Sincerely,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Pam Mills, Family Support Supervisor

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-964

**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 a timely appeal, filed April 12, 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
Pamela Mills, 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 first 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-1a Physician Summary-date of last patient contact of August 24, 2010 (REDACTED) M.D.)
- D-1b Physician Summary-date of last patient contact December 15, 2009 completed by (REDACTED) M.D
- D-2 West Virginia Income Maintenance Manual § 24.4 C
- D-3 West Virginia Income Maintenance Manual § 24.4 M
- D-4 Personal Responsibility Contract dated November 12, 2010
- D-5 Referral for Vocational Assessment dated February 24, 2011
- D-6 Computer printout of case comments dated December 3, 2010
- D-7 Personal Responsibility Contract dated December 3, 2010
- D-8 Scheduling Notice to Claimant from (REDACTED) dated March 7, 2011
- D-9 Order of Dismissal from Board of Review dated March 29, 2011
- D-10a Correspondence from Family Support Specialist to -----
- D-10b Correspondence from Family Support Specialist to -----
- D-11 West Virginia Income Maintenance Manual § 13.9
- D-12 West Virginia Income Maintenance Manual § 13.10
- D-13 Notice of Decision dated April 6, 2011
- D-14 Hearing Request

VII. FINDINGS OF FACT:

- 1) On April 15, 2011, the Board of Review received a Hearing Request (Exhibit D-14) regarding the Claimant's appeal of the Department's decision to implement a first sanction against her WV WORKS cash assistance. The sanction resulted from the Claimant's failure to cooperate with the WV WORKS program requirements.
- 2) The Claimant, who experiences chronic lower back pain, submitted physician's statements to the Department in order to address her overall employment limitations and the length of her disability. The Claimant submitted Exhibit D-1a, Physician's Statement which documents in pertinent part:

Date of Last Patient Contact-8/24/2010

Diagnosis-Chronic lower back pain, Type II DM, anxiety, hyperlipidemia, lumbar [illegible]

Prognosis-poor

Length of Time Incapacity/Disability Expected to last-1 year

Employment Limitations-She can not [sic] lift more than 10 pounds, cannot push or pull, can not [sic] walk long distances (maybe less than 30 mins) and slow walking, Can not [sic] stand more than 15 mins.

Additionally, the Claimant submitted Exhibit D-1b, Physician Statement from [REDACTED] M.D., which documents in pertinent part:

Date of Last Patient Contact-12/15/09

Diagnosis-Diabetes Type II, Lipids, Deg. Disc disease and chronic pain

Prognosis-Limited

Length of Time Incapacity/Disability Expected to last-1 yr at least

Employment Limitations-No lifting, bending, twisting, operating heavy equipment

- 3) Ms. Pamela Mills, Family Support Supervisor testified that the Claimant completed an update to her Personal Responsibility Contract, hereinafter PRC, on November 12, 2010 (Exhibit D-4). This exhibit documents the Claimant's assignments and activities as:

Assignment/Activity	Begin Date/Due Date
Report all changes within ten days	11/12/10-N/A
Keep all scheduled DR appointments	11/12/10-N/A
Cooperate with Vocational Assessment	11/12/10-N/A
Take TABE/LNS/EHI Testing at 9 A.M.	11/17/10-11/17/10

Ms. Mills stated that the Family Support Specialist, hereinafter FSS, instituted a referral for a vocational assessment in the PRC (Exhibit D-5) because the physician statements submitted by the Claimant indicate her disability was expected to last longer than six months. Ms. Mills stated that the purpose of the vocational assessment is to determine what accommodations can be made by employers to allow individuals with disabilities to gain employment and that the referral is mandatory for all WV WORKS recipients who are determined unable to work for more than six months.

- 4) On December 3, 2010, the Claimant completed an eligibility redetermination for her benefits. Ms. Mills testified that the Claimant reported at the redetermination that she missed her scheduled Test of Adult Basic Education (TABE) and that she applied for employment with [REDACTED]. On the same date, the Department completed an additional update to the Claimant's PRC (Exhibit D-7) which documents her requirements of the program as:

Assignment/Activity	Begin Date/Due Date
Report all changes within ten days	12/3/2010-N/A
Keep all scheduled DR appointments	12/3/2010-N/A
Cooperate with Vocational Assessment	12/3/2010-N/A
Take TABE/LNS/EHI Testing at 9 A.M.	N/A-12/15/2010

- 5) On March 7, 2011, the [REDACTED] hereinafter [REDACTED] issued Exhibit D-8, Scheduling Notice to the Claimant to inform her of the time and place of her vocational assessment. Exhibit D-8 documents in pertinent part:

Your WV WORKS Caseworker has referred you to me for Vocational Assessment. Your assessment is scheduled for Tuesday, March 29 at 9:00 A.M. Please report to the [REDACTED] Co. DHHR office, [REDACTED]

██████████ WV at the above time for assessment. The assessment should take approximately three hours to complete, so please plan accordingly.

- 6) On March 7, 2011, the Board of Review received a prior hearing request from the Claimant appealing the Department's decision to implement the referral for vocational assessment. However, the Claimant was not subjected to any adverse action by the Department and her request for a hearing was dismissed effective March 29, 2011 (Exhibit D-9).
- 7) On March 29, 2011, the Claimant failed to appear for her scheduled Vocational Assessment. On March 31, 2011, the FSS, contacted ██████████ (Exhibit D-10a) and requested that the Claimant's assessment be rescheduled. On April 4, 2011, the FSS received an electronic mail reply (Exhibit D-10b) from -----, ██████████ regarding the rescheduling request. This exhibit documents:

I called ----- this am [sic] & tried to reschedule, but she refused. She said you have documentation that "I can't be rehabilitated". I explained that she could take frequent breaks but she refused to reschedule.

- 8) On April 6, 2011, the Department issued the Claimant Exhibit D-13, Notice of Decision which documents in pertinent part:

Action: Your WV WORKS/WVEAP will decrease from \$340.00 to \$227.00 effective 5/1/11.

Reason: A first sanction is applied due to failure to comply with the requirements of the Personal Responsibility Contract (PRC) and/or the Self Sufficiency Plan (SSP).

A sanction will be applied to your assistance group effective 5/11. This is the first sanction and will continue for 3 months.

Your WV WORKS benefit amount before any repayment is taken out will be reduce by 1/3.

This sanction is being applied due to the failure of ----- to meet the terms of the Personal Responsibility Contract by refusing to participate with work programs.

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 4/19/11 at 2:00 at the office address listed above.

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

Ms. Mills stated that the Claimant failed to appear for the scheduled good cause appointment and that the sanction remained in effect.

9) The Claimant contends that she has met the Department's requirements for the program by providing the necessary physician statements that explain her disabilities. The Claimant purported that she cannot be rehabilitated and her lower back pain affects her ability to sit or stand for long periods of time. The Claimant indicated that she has experienced three back surgeries, one of which resulted in a titanium rod being inserted into her back. The Claimant indicated that she has attempted employment in the past, but her physical abilities prevent her from becoming gainfully employed. The Claimant testified that she did not attend the scheduled good cause appointment because a hearing was already scheduled on the issue.

10) West Virginia Income Maintenance Manual Chapter 24.4 documents in pertinent part:

Vocational Assessment

Additional testing, assessments, and evaluations may be necessary for WV WORKS participants with physical and/or mental disability issues in order to determine appropriate placements in training and employment. Referrals to the WVU CED Assessment Specialist or an alternate approved provider, for vocational assessments for WV WORKS participants are made when a participant meets one or more of the following conditions:

- Determined unable to work for more than six months due to a physician's statement

- Determined incapacitated for WV WORKS by MRT and a referral to Division of Rehabilitation Services (DRS) is indicated on the ES-RT-3

- Scores 12 and above in Sections A-D of the Learning Needs Screening or answers "yes" to questions #13 in Section D

- Received TANF/WV WORKS for 48 months or more; or

- WV WORKS Supervisor and Worker have determined individual could benefit from completion of the assessment in determining appropriate activity placement.

All WV WORKS participants who meet the criteria listed above must be referred to [REDACTED]

[REDACTED] unless the Worker and the Supervisor determine there are documented and verified circumstances which prevent the effective administration and completion of the vocation assessment. Appropriate documentation must be provided and corresponding case comments must be made in CMIC. These circumstances must be reviewed monthly.

11) 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.

12) West Virginia Income Maintenance Chapter 13.10

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.

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 first-level sanction results in a one-third reduction in WV WORKS cash assistance for a three month period. Additionally, policy notes that the worker has considerable discretion when imposing the sanction.
- 2) Policy stipulates that additional testing, assessments, and evaluations may be necessary for participants with physical and/or mental disability issues. The purpose of these assessments is to determine appropriate placements in training and employment. Participants are referred for these assessments when a physician's statement determines that the participant is unable to work for more than six months.
- 3) The matter before the Board of Review is whether or not the Department was correct in its decision to implement a first sanction against the Claimant's WV WORKS cash assistance based on her failure to adhere to the requirements of her PRC. The evidence reveals that the Claimant, who was unable to engage in a work activity for at least 12 months, met the requirements for a referral for a vocational assessment in order to determine an appropriate placement for training and employment. On multiple occasions, the Claimant completed an update to her PRC and agreed to complete a vocational assessment. The evidence reveals that the Claimant was non-compliant with her PRC when she failed to complete the scheduled vocational assessment on March 29, 2011 and refused to have the assessment rescheduled. While the Claimant contends her physical condition "cannot be rehabilitated", she did not contest the requirement of a vocational assessment during the negotiation of her PRC and did

not establish good cause for failing to complete the assessment. Therefore, the imposition of a first sanction is warranted.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to implement a first sanction against 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 June, 2011.

Eric L. Phillips
State Hearing Officer