



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

January 13, 2015



RE: [REDACTED] v. WV DHHR
ACTION NO.: 14-BOR-3736

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Lori Woodward
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Barbara Bolinger, Family Support Specialist

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

[REDACTED]

Claimant,

v.

Action No: 14-BOR-3736

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing convened on January 8, 2015, on an appeal filed November 21, 2014.

The matter before the Hearing Officer arises from the November 18, 2014 proposal by the Respondent to apply a third sanction against Claimant's WV WORKS case resulting in closure of the benefit.

At the hearing, the Respondent appeared by Barbara Bolinger, Family Support Specialist. The Claimant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV WORKS Personal Responsibility Contract (PRC) and Self-Sufficiency Plan (SSP), signed and dated November 13, 2014
- D-2 WV WORKS Personal Responsibility Contract (PRC) form DFA-PRC-1, signed and dated November 13, 2014
- D-3 [REDACTED] ER printout dated November 20, 2014

Claimant's Exhibits:

- C-1 Rhabdomyolysis informational sheet

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the

evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Claimant is a recipient and participant of the Department's WV WORKS cash assistance program. As a requirement of the program, the Claimant signed a Personal Responsibility Contract (PRC) on November 13, 2014, and agreed to attend SPOKES (Strategic Planning in Occupational Knowledge for Employment and Success) classes beginning November 17, 2014. (Exhibit D-1)
- 2) The Claimant signed and agreed to the terms of the PRC and acknowledged that she understood her responsibilities as a WV WORKS client and the consequences for not complying with the PRC. (Exhibit D-2)
- 3) The Claimant's worker, Barbara Bolinger, issued notice on November 18, 2014, to the Claimant informing her that a third-level sanction would be applied to her case for her failure to meet the terms of the PRC by failing to attend an assigned activity. This notice included a good cause appointment which was scheduled for November 26, 2014. The Claimant failed to attend the scheduled good cause appointment.
- 4) The Claimant testified that because of her medical issues, she was unable to begin the SPOKES class. She went to the emergency room on November 20, 2014, and submitted verification of her visit and that she had a diagnosis of rhabdomyolysis, conjunctivitis, and creatinine elevation on that date. There was no indication that these symptoms existed on November 17, 2014. (Exhibit D-3)
- 5) The Claimant did not contact Ms. Bolinger to inform her that she was unable to begin the SPOKES classes as agreed until November 21, 2014.
- 6) The Claimant admitted she had no intention to attend SPOKES classes at the time she signed the PRC. Because she felt she was unable to work due to her medical issues, the Claimant testified that she felt she was forced to agree to attend SPOKES classes so she could receive money to pay her utility bills.
- 7) It is noted that at the hearing the Claimant questioned that this was a third-level sanction being applied. However, Ms. Bolinger explained that the Claimant had previous penalties several years ago, in addition to a third-level sanction in May of 2014, and that penalties attach to a client "forever". Claimant did not contest these previous sanctions.

APPLICABLE POLICY

West Virginia Income Maintenance Manual (WV IMM) §24.1 explains that every parent and other caretaker who is included in a payment and any non-recipient Work-Eligible Individual in the household has a responsibility to participate in an activity to help prepare for, obtain and maintain gainful employment.

WV IMM §1.25 instructs that failure, without good cause, to adhere to the responsibilities or any task listed on the PRC after signature, results in a sanction being imposed.

WV IMM §13.9 states that when a member of the Assistance Group (AG) does not comply with requirements found on his PRC or SSP, a sanction must be imposed unless the Worker determines that good cause exists. The sanction imposed for a third offense and all subsequent offenses is ineligibility for cash assistance for 3 months. The Worker has considerable discretion in imposing a sanction. (WV IMM §13.10)

DISCUSSION

The Department proposed that the WV WORKS benefits of the Claimant be terminated based on a third-level program sanction for non-compliance with the terms of a contract outlining the program expectations of the Claimant.

The Claimant failed to meet those program expectations by not beginning her SPOKES classes as she agreed in her PRC. A program requirement to be eligible for WV WORKS benefits is to participate in some type of program activity as agreed upon by the client and the worker. By her own admission, the Claimant had no intention to fulfill the term of that contract when she signed the PRC on November 13, 2014. She understood that the consequence of not following her PRC was that a penalty could be applied. Good cause cannot be found for her non-compliance.

There was no dispute of the count of prior sanctions against the Claimant's WV WORKS benefits. Without good cause for a "third or subsequent" instance of PRC/SSP non-compliance, the Department's proposal to terminate the Claimant's WV WORKS benefits is correct.

CONCLUSIONS OF LAW

- 1) The Claimant failed to comply with PRC/SSP requirements. The Department must apply a sanction if good cause is not met. Because the Claimant did not establish good cause, the Department must sanction the Claimant's WV WORKS benefits.
- 2) The Claimant's WV WORKS case had been previously sanctioned at least two other times. Therefore, the correct sanction is termination of the Claimant's WV WORKS benefits.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Department's proposal to apply a third level sanction and terminate the Claimant's WV WORKS cash assistance for a period of three (3) months.

ENTERED this 13th day of January 2015.

Lori Woodward, State Hearing Officer