

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,262

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare decreasing his ANFC benefits by removing his needs from the family's ANFC grant. The issue is whether the petitioner failed to participate in the Reach Up program within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner lives with his wife and their four children. The family has received ANFC benefits for several years based on the petitioner's "unemployment", and the petitioner has had a longstanding relationship (including several "sanctions", see infra) with the Reach Up program. During much of the time in question in this matter--late September through early November, 1994--the petitioner and his family were living in a homeless shelter.

On September 26, 1994, the petitioner registered for Reach Up and was assigned to participate in an intensive work search and instructed to meet daily with his Reach Up case manager for possible job referrals. The case manager was concerned about the petitioner's homelessness, and wanted to try to place the petitioner in a job as soon as possible. The petitioner initially agreed to these terms.

On September 27, 1994, the first day he was to meet with his case manager, the petitioner called to say his daughter was sick but that he would come in the next day.

When the petitioner did not appear the next day and did not call, the case manager, on September 29, 1994, sent the petitioner a "conciliation letter" setting a meeting on October 18, 1994, to discuss the issue of the petitioner's "apparent failure or refusal to comply with the Reach Up Program".

The case manager did not hear again from the petitioner, and eventually his letter of September 29 was returned not delivered because of "incorrect address". During this time the petitioner had also failed to follow through on his required work search. On October 18, 1994, the case manager sent the petitioner

another conciliation letter, this time by certified mail, which the petitioner received. This letter instructed the petitioner to appear at a meeting with his case manager on October 25, 1994.

On October 25, the petitioner appeared at his scheduled meeting.⁽¹⁾ The petitioner informed his case manager that he was trying to start his own business making and selling jewelry and he stated that he wished to appeal Reach Up's determination that he had to engage in a work search.⁽²⁾ Because of the pending appeal on this issue the case manager did not require the petitioner to resume a work search. However, the meeting produced a "conciliation resolution" signed by the petitioner and the case manager in which the petitioner agreed to the following conditions:

- 1) See case manager Thursdays at 10 AM.
- 2) Keep case manager informed of any circumstances that affect your employability.
- 3) Week of 11-7-94, will see case manager at 3:30 PM Thursday.
- 4) Check with DSW worker re income reporting.

Item 3 on the above list was put in at the petitioner's request after the petitioner told the case manager that he was taking a course that week that would conflict with a 10 AM meeting time.

On November 2, 1994, the day before his first scheduled weekly meeting, the petitioner called his case manager and asked to be excused from the next day's meeting because he had just found housing and was moving from the shelter. The case manager agreed, but reminded the petitioner of the meeting scheduled the next week and instructed him to come.

The petitioner did not come to the meeting scheduled for November 10, 1994, and did not call his case manager. On November 14, 1994, the case manager notified the petitioner's ANFC caseworker that the petitioner should be "sanctioned" because of his failure to abide by the terms of his conciliation agreement made on October 25, 1994.

The petitioner appeared at Reach Up on November 17, 1994, the date which would have been his next scheduled meeting with his case manager. At that time the case manager orally informed the petitioner that he had been sanctioned for not appearing the week before. On November 30, 1994, the Department officially notified the petitioner that his ANFC was being reduced by removing his needs from the family's grant due to his failure to participate in Reach Up.

At the fair hearing in this matter, held on March 8, 1995, the petitioner testified that he had not read the October 25 Conciliation Resolution carefully before signing it, and had then misplaced it. He stated that with the stress of moving he was "confused" about the terms of the agreement and believed that he had been "excused" from meeting with his case manager the week of November 7, 1994.

Even if the petitioner's testimony is credible, under the circumstances it must be concluded that it was culpably negligent of him not to at least call his case manager to see if he was "excused" from his meeting on November 10. The agreement was clear as to the meeting, and the time had been specifically arranged to accommodate the petitioner's schedule. The petitioner had been sanctioned at least two times previously (see infra) and was well aware of the consequences of not complying with Reach Up. He had

been homeless and unemployed for an extended period of time. If anything, his case manager had bent over backwards in the past to accommodate him when he could not attend scheduled meetings. Under these circumstances, it cannot be found that the petitioner had any reasonable or legitimate basis to understand or assume that he had been excused from his meeting on November 10, 1994. Therefore, it is found that the petitioner did not "participate satisfactorily" in the agreement that was reached on October 25, 1994.

ORDER

The Department's decision is affirmed.

REASONS

As an "unemployed parent" the petitioner is required to "cooperate with Reach Up participation requirements". W.A.M. § 2333.1(7).

The regulations regarding the Reach Up program, WAM §§ 2340-2359, include the following provisions:

2349.4 De Facto Refusal

De facto refusal to participate includes, but is not limited to, an individual's failure without good cause:

...

to show up for a program interview or appointment;

...

When the failure to refusal is implied (de facto) by an individual's failure without good cause to fulfill one or more of the above standards, the Reach Up case manager may attempt to contact the individual and discuss the act or pattern of behavior in question. If the individual fails to cooperate or fails to meet good cause criteria, the conciliation process begins.

2350 Conciliation Process

The Reach Up program has a conciliation process to resolve disputes related to an individual's participation. This process applies to **Group 1, 2, or 3** before and after time limits. Either the participant or the Reach Up case manager initiates the conciliation process. The conciliation effort must begin as soon as possible but no later than ten calendar days following reduction of earnings or failure or refusal to accept or continue participation or employment. The conciliation period lasts for no more than 15 consecutive calendar days.

If the participant is making a good faith effort to resolve the disputes related to their participation, the case manager may extend the conciliation period an additional 15 consecutive calendar days.

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2350.1 Successful Resolution

If the participant agrees to resume participation in the activity which was the source of the determination of failure to comply without good cause, he or she will have up to five days to start participation and must participate satisfactorily for a minimum of two weeks. The participant must comply for a two-week period, or he or she will be sanctioned according to the applicable sanction. . . .

2351 Sanctions

Individuals who fail to comply, without good cause, with program requirements shall be subject to sanctions according to provisions in the following two sections.

2351.1 Sanctions for Group 1, 2, or 3 Participants (Except Group 3 Parents Who Have Received At Least 13 or 28 months of ANFC and Minor Parents)

A nonexempt recipient who fails without good cause to comply shall have his or her needs excluded in determining eligibility for and the benefit amount in ANFC.

. . .

Length of sanctions are as follows:

1. For the first such occurrence, the individual is disqualified until he/she complies.
2. For the second occurrence, the individual is disqualified for three (3) payment months or until he/she complies, whichever is longer.
3. For any subsequent occurrences, the individual is disqualified for six payment months or until he/she complies, whichever is longer.

. . .

At no time has the petitioner maintained that he had "good cause" under the regulations not to participate in Reach Up and not meet with his case manager on a regular basis.⁽³⁾ The agreement of October 25, 1994, specifically scheduled a meeting at 3:30 PM Thursday the week of November 7, 1994. The petitioner failed without good cause to attend that meeting or to call his case manager that week.

Given these facts the only argument the petitioner can reasonably make is a technical one that under the above regulations the scheduled meeting on November 10, 1994, was outside the time constraints of the conciliation process. WAM § 2350, supra, provides that the conciliation process lasts for no more than 15 days, unless extended by another 15 days by the case manager. Although it appears that the petitioner's case manager was not cognizant of these limitations, it must be concluded that by the agreement itself (which included a meeting specifically scheduled on November 10, 1994,) he gave the petitioner a de facto extension of the conciliation process beyond 15 days of the meeting October 25, 1994.

The conciliation process was initiated because the petitioner had previously failed to attend scheduled meetings with his case manager. By the terms of the "conciliation resolution" made on October 25, 1994, the petitioner's "participation" with Reach Up did not begin again until the week of October 31, when he had his first scheduled "Thursday" meeting with his case manager on November 3 (from which he was excused after he called his case manager on November 2). The meeting the petitioner missed (without calling) was scheduled November 10, 1994, which was eleven days after October 31, and seven days after November 3.

Thus, it must be concluded that the "minimum" two-week period of compliance, as specified in WAM § 2350.1, supra, did not occur.⁽⁴⁾ Under that regulation the Department is required to impose the applicable sanction. Because the petitioner has been sanctioned under Reach Up at least two times previously, the Department's decision that the petitioner is disqualified from receiving ANFC for six months is affirmed.

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1. The petitioner came to the meeting accompanied by an "advocate" from a community action agency. When the advocate told the case manager that she was not "representing" the petitioner, the case manager told the petitioner she could not attend the meeting. When the petitioner became upset, the case manager consulted with his supervisor, who advised him that the advocate could attend the meeting. By this time, however, the advocate had left the building. The petitioner then elected to attend the meeting by himself rather than ask for a postponement. Although the hearing officer agrees that the advocate should have been allowed to participate in the meeting in the first place, it is found that under the circumstances there was no violation of the petitioner's rights, and that the petitioner participated in the meeting voluntarily and without duress. Moreover, as discussed below, it cannot be found that any of the conditions that the petitioner agreed to at the meeting were in any way confusing, unreasonable, or burdensome.
2. This appeal was considered separately by the board in Fair Hearing No. 13,130. In a Decision dated February 24, 1995, the board affirmed the Department's decision in that case requiring the petitioner to participate in a Reach Up work search.
3. The petitioner's appeal in Fair Hearing No. 13,130 was based only on his dispute with the requirement that he participate in a formal work search.
4. The agreement gave the petitioner at least "five days to start participation".