STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,110

)

Appeal of)

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare removing her needs from her family's ANFC grant for a period of three months. The issue is whether the petitioner failed to participate in Reach Up without good cause.

Following an initial Recommendation by the hearing officer, dated January 31, 1996, the Board (in an Order dated February 16,1996) remanded the matter for further hearing to allow the petitioner to present evidence regarding conversations with her DSW caseworker that she alleges led her to forego a timely appeal of the decision by her Reach Up counselor that she had failed to cooperate with Reach Up. Pursuant to the Board's Order, further hearing was held on March 13, 1996.

FINDINGS OF FACT

The following facts are not in dispute. The petitioner receives ANFC as an "unemployed parent" and is required to participate in the Department's Reach Up program.[(1)] On October 3, 1995, the petitioner registered for Reach Up and was assigned an eight-week work search and referred to a job interview. The petitioner was scheduled for her next Reach Up meeting on October 11, 1995.

When the petitioner failed to appear at this meeting or call to explain her absence her counselor sent her a "conciliation letter" (dated October 16, 1995) in which a "conciliation conference" was scheduled for October 23, 1995. The petitioner also failed to appear at this meeting, and did not call to explain her absence. The counselor then sent the petitioner a notice (dated October 23, 1995) setting another conciliation meeting to be held on October 31, 1995.

Again, the petitioner did not appear at this meeting or call her counselor. At that point, the counselor determined that the petitioner had failed to participate in the program and notified the Department that he was imposing a sanction. Because this was the petitioner's second failure to participate in the program (a previous Reach Up sanction had been imposed on the petitioner in July, 1995) the Department reduced the petitioner's ANFC grant for three months by removing the petitioner's needs from the grant.

The petitioner admits all the above facts but maintains that she missed the meetings because she feels the Reach Up counselor she saw at her first interview on October 3, 1995, had been condescending

toward her. The petitioner further alleges that following her meeting with Reach Up she called her caseworker at DSW to complain about her treatment at Reach Up and to request a hearing. The petitioner also maintains that her worker told her and her husband that she did not need to file an appeal because she could register for work with the Vermont Job Service instead of Reach Up.

At the remand hearing the petitioner and her husband recalled (not very convincingly) that their conversations with their DSW caseworker took place sometime before the petitioner received the notice (dated October 31, 1995) from DSW that her needs were being removed from the ANFC grant because of her failure to participate in Reach Up. As discussed below, it is the timing of the conversations between the petitioner and her husband and the caseworker that is crucial--not necessarily the substance of those conversations.

The petitioner's ANFC worker also testified, but she had a very different recollection of both the timing and the substance of her phone conversations with the petitioner and the petitioner's husband. The worker testified (and the caserecord confirms) that on October 31, 1995, she learned for the first time (via her receipt of a memo from the petitioner's Reach Up counselor) that the petitioner had been sanctioned from Reach Up. Upon receiving this information, the worker (on that same date) sent the petitioner two notices. The first (referred to above) notified the petitioner that due to her failure to participate in Reach Up her needs would be removed from the ANFC grant. The second notice was that because the petitioner was no longer registered for work through Reach Up, in order to continue qualifying for Food Stamps the petitioner would be required to register for work with the Vermont Job Service by November 14, 1995.[(2)]

On November 16, having learned that the petitioner had not registered with Job Service, the worker sent the petitioner another notice that her food stamps would be terminated effective December 1, 1995. According to the worker, it was only after the petitioner had received the November 16th notice regarding her food stamps that the petitioner called her.

The worker admits that she did not make notes of the conversations, but she recalled that the petitioner and her husband did complain about the alleged mistreatment of the petitioner by the Reach Up counselor. The worker explained to the petitioner that she could still purge herself of any food stamp disqualification by registering promptly with Job Service,[(3)] and that in the immediate future she would be dealing only with a counselor from Job Service ("Sukie"), and not with anyone from Reach Up. The worker adamantly denies that she told the petitioner or the petitioner's husband that registering with Job Service would purge their Reach Up sanction.

Not only was the worker a credible witness, but she further explained that the above conversation with the petitioner and the petitioner's husband could not have taken place prior to sometime in November, 1995, because prior to that date neither she nor the petitioner knew that the petitioner had been sanctioned by Reach Up. Prior to October 31, 1995, the petitioner would have had no basis to question, and the worker would have had no basis to know what the petitioner was talking about regarding, any sanction from Reach Up or any directive to register with Job Service. Therefore, it does not make any sense that a conversation regarding the interplay between ANFC/Reach Up and Food Stamps/JobService could have occurred prior to both the petitioner and her DSW caseworker having been informed that a Reach Up sanction had been imposed.[(4)]

ORDER

The Department's decision is affirmed.

REASONS

A condition of receiving ANFC benefits as an "unemployed parent" is that the designated parent who is unemployed must be "cooperating with Reach Up participation requirements". W.A.M. § 2333.1(7). Such parents who have been determined to have failed to participate in Reach Up without good cause are subject to having their "needs excluded in determining eligibility for and the benefit amount in ANFC". W.A.M. § 2351.1. The length of the above disqualification for the "second occurrence" of such a failure to participate is for three months. Id.

The regulations also provide that "failure without good cause to appear for two scheduled conciliation conferences results in automatic imposition of the applicable sanction". W.A.M. § 2350. There is no question that the petitioner in this case failed to appear at two such meetings.

The "Good Cause Criteria" for failure to participate in Reach Up are contained in W.A.M. § 2349.1. None of the criteria listed in that section remotely applies to the petitioner's situation herein--and the petitioner does not allege otherwise.[(5)] As noted above, even if the petitioner's Reach Up counselor was rude to her, it cannot be found that the petitioner made any attempt, prior to being sanctioned, to notify him or anyone else at Reach Up or DSW that this was a problem. Even if she did, however, it does not excuse her failure to attend her next scheduled Reach Up meeting on October 11, 1995, and the two conciliation meetings that were scheduled on October 23 and 31, 1995.[(6)]

Although it might be possible to conclude that the petitioner and her husband could have been confused by what their DSW worker told them regarding the Food Stamps requirement that the petitioner register with Job Service, that confusion could not have occurred until well after the petitioner's Reach Up Sanction had been imposed as of October 31, 1995. Based on the testimony and the caserecord, it cannot be concluded that the petitioner or her husband had any contact with anybody at either Reach Up, DSW, or DET from October 3 through sometime after November 16, 1995. Therefore, regardless of what their DSW worker might have later told them, there is no basis either in the evidence or in the regulations that would excuse the petitioner's failure to cooperate with Reach Up.

It must, therefore, be concluded that the petitioner failed without good cause to appear at two scheduled conciliation meetings, which under the regulations (supra) triggers the "automatic imposition of the applicable sanction". Inasmuch as the Department's decision in this matter is in accord with the facts and the pertinent regulations, the board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

# # #

1. The petitioner is required to participate because her husband is currently under a six month sanction for his failure to participate in Reach Up. See Fair Hearing No. 13,262.

2. All able bodied food stamp recipients are required to register for work through Job Service. Food Stamp recipients who also receive ANFC, and who are participating in Reach Up, are exempt from registering with Job Service. The petitioner's exemption ended when she was sanctioned from Reach Up. See Food Stamp Manual § 273.7.

3. It appears that following this conversation the petitioner did register with Job Service, and her Food Stamps were not adversely affected.

4. One could conclude, perhaps, that the petitioner might have called her worker in anticipation of the Reach Up sanction she (due to her and her husband's history with that program) "knew" would soon be coming. Although the petitioner and her husband do appear to be familiar with Reach Up procedures, such a finding would also necessitate an attribution of forthrightness, candor, and initiative on their part that is simply not consistent with their testimony and demeanor. It is also beyond credulity that the petitioner's caseworker would not realize or recall (or would deny) that her conversation with the petitioner was in the context that the petitioner merely anticipated, but had yet not received any notice of, a Reach Up sanction.

5. At the initial hearing, the petitioner and her husband also attempted to reopen an issue that was decided against them in Fair Hearing No. 13,130--namely, whether their attempts to start a jewelry business should exempt them from participating in Reach Up. Inasmuch, however, as the Board has already ruled on this issue, and nothing in the petitioner's circumstances has changed since that ruling (the petitioner does not allege that she and her husband have yet made any substantial money from this "business"), it is unnecessary and inappropriate for the Board to consider it again.

6. Every written notice the petitioner received from Reach Up regarding the scheduling of her conciliation meetings included clear and conspicuous notices of the petitioner's right to either request a hearing or call her counselor if she had any questions. Also, because the petitioner's counselor at Reach Up (whom she could have contacted) is not the same individual who the petitioner alleges was rude to her, there is no basis to conclude that the petitioner, and certainly not her husband, would have been discouraged or intimidated from exercising her appeal rights in this regard.