

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,174

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare placing her ANFC grant on vendor payment status. The issue is whether the petitioner's husband (who hereinafter will be referred to as the petitioner) refused to participate in the Reach Up job search requirement. The issue is whether the petitioner had good cause under the pertinent regulations for his refusal to cooperate.

FINDINGS OF FACT

On October 23, 1995, the Department notified the petitioner that because he was an unemployed parent in a "Group 3" household he would have to participate in an eight-week job search through the Reach Up Community Service Employment (CSE) program commencing November 1, 1995, prior to being required to either find employment or accept "subsidized employment" by January 1, 1996.⁽¹⁾ On October 27, 1995, the petitioner's Reach Up case manager sent the petitioner a notice of an appointment at Reach Up for an "assessment meeting" on November 3, 1995. The notice included the following conspicuous warning:

Failure without good cause to appear for a scheduled assessment meeting after two written requests to do so shall result in conciliation. If a conciliation process is not successfully resolved, sanction(s) to ANFC may be applied.

The petitioner attended the assessment meeting on November 3, and signed an agreement with Reach Up to participate in a preliminary two-month job search and to attend regularly scheduled meetings with his Reach Up case manager to monitor his progress. The first such meeting was on November 13, 1995. The petitioner attended the meeting and had completed his work search satisfactorily.

The second meeting was scheduled on November 20, 1995. The petitioner called in sick before the meeting and another meeting was scheduled on November 27, 1995. The petitioner appeared at the November 27 meeting and his work search was again approved. Another meeting was scheduled on

December 4, 1995.

The petitioner did not appear at the December 4 meeting and did not call or notify his case manager. On December 5, 1995 the case manager sent the petitioner a "conciliation letter" by certified mail,⁽²⁾ in which the petitioner was notified of a conciliation meeting scheduled on December 12, 1995.

The petitioner did not appear at the December 12 conciliation meeting, but the next day left a phone message for his case manager asking when the meeting was scheduled. The case manager was not at work on December 13 or 14, but on December 15, 1995, sent the petitioner a second conciliation letter scheduling a meeting for December 27, 1995.

The petitioner came to the December 27 meeting and entered into a "conciliation resolution" agreement with his case manager that he would "restart" his work search and meet with his case manager on a weekly basis. The first such meeting was scheduled on January 3, 1996.

On January 3, the petitioner called in sick. The case manager told the petitioner to attend his next scheduled meeting on January 9, 1996.

On January 9, the petitioner called his case manager to say he was still sick. The case manager told the petitioner to come to the next meeting, which was set for January 16, 1996.

The petitioner did not attend the meeting on January 16, and did not call or notify his case manager. On January 17, 1996, the case manager determined that the petitioner had failed to follow through on his conciliation agreement and notified the petitioner's DSW worker that the petitioner should be sanctioned accordingly.

On January 18, 1996, the Department sent the petitioner a notice that effective February 1, 1996, the family's ANFC grant would be paid by vendors directly to the providers of the petitioner's housing, fuel, utilities, and food--with only the remainder being sent directly to the petitioner.⁽³⁾

As of the date of the hearing in this matter (April 17, 1996) the petitioner's Reach Up case manager had not heard from the petitioner since January 9, 1996, and had not seen any evidence that the petitioner has participated in a job search since the conciliation meeting on December 27, 1995.

At the hearing the petitioner offered no excuse or justification for his failure to attend the scheduled meetings other than to again (see Fair Hearings No. 13,130 and 14,110) attempt to reargue that participating in Reach Up unfairly interferes with his self-employed "jewelry business" (which had been the subject of Fair Hearing No. 13,130, a copy of which is attached to this Recommendation and is incorporated by reference herein). The petitioner does not allege, however, that his situation vis-a-vis his "business" has changed since the Board's decision in Fair Hearing No. 13,130--i.e., that the "business" is producing any substantial income.

ORDER

The Department's decision is affirmed.

REASONS

The regulations governing the Reach Up conciliation process include the following:

The issue in this matter is whether the petitioner has "exhibited a pattern of behavior demonstrated in a series of actions from which refusal to participate can be reasonably inferred". See W.A.M. § 2350.2(1), supra. The petitioner's sole argument in this matter is that it is somehow unfair or contrary to the intent of the Reach Up program for the Department to require him to look for a job rather than "support" him in his self-employed jewelry "business". Although the Board ruled against the petitioner on this exact argument over a year ago (see Fair Hearing No. 13,130, attached), the petitioner continues to use his jewelry "business" as an excuse to flout the requirement that he actively seek a job that will produce significant income for his family. (See, also, Fair Hearing No. 14,110.)

The Department (and the Board) need not engage itself in a philosophical dispute with the petitioner over the fairness of the Reach Up regulations as they apply to his situation. As was held in Fair Hearing No. 13,130, the regulations are clear that the petitioner is required to participate in all aspects of Reach Up unless he can demonstrate that his net earnings from self employment are equivalent to the hourly minimum wage times 30 hours per week. See W.A.M. § 2344.2(A)(4).⁽⁴⁾ The petitioner has not alleged or demonstrated that his jewelry "business", at any time, has produced income approaching this amount.

Based on the petitioner's testimony and behavior it can only be concluded that he has knowingly refused to participate as required in the Reach Up conciliation process and in the Reach Up CSE program in general. It must also be concluded that the conditions specified in § 2351.2(1)(a) (supra) include cases in which an individual, like the petitioner in this matter, refuses to participate in a preliminary requirement of the CSE program. The petitioner's refusal to participate in the CSE work search must be considered tantamount to a refusal to "accept an unsubsidized job or community service employment". *Id.* Otherwise, an individual could escape any sanction by refusing to participate in the program before he is actually offered a job. Such an irrational result is clearly not contemplated by the regulations.

Inasmuch as the Department's decision is in accord with the above regulations it is affirmed.⁽⁵⁾

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1. Under the Welfare Restructuring Project, "Group 3" parents who have been receiving ANFC for at least 14 months are subject to this requirement. See W.A.M. §§ 2346.8 and 2346.9.
2. The Department's records show that the petitioner received this letter on December 6, 1995.
3. The sanction also included attending three meetings with the petitioner's ANFC caseworker and the filing of monthly reports as to the family's expenses.
4. The regulation cited in Fair Hearing No. 13,130 (WAM § 2344.1) was amended, but the minimum-wage-times-30 requirement was not changed.
5. The petitioner's attention is called to the fact that under the regulations he can end his sanction by returning to Reach Up, completing his work search, and accepting either unsubsidized or subsidized employment. See § 2351.2(4).