

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,635

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare reducing her ANFC grant by removing the needs of the father of her child. The issue is whether the father refused to participate in Reach Up within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner lives with her young child and the father of that child. The family receives ANFC based on the father's unemployment. As the designated "principal wage earner" the father was a mandatory participant in the Department's Reach Up program.

During August, 1996, the father failed to appear at a mandatory Reach Up job training session. On August 26, 1996, the father's Reach Up counselor sent him a letter scheduling a "conciliation meeting" for September 5, 1996. When the father failed to appear at that meeting and did not notify his counselor another meeting was scheduled for September 19, 1996.

The father attended the September 19 meeting at which time he entered into a written "conciliation agreement". The agreement provided that the father would call his counselor if he could not attend any Reach Up appointment or activity, would follow up on all job referrals, would submit a weekly 20 hour work-search documentation, and would accept any suitable job offered to him.

The father stopped submitting his 20 hour work-search verification form after the week of September 27, 1996. He failed to follow up on two job interviews that his counselor gave him on October 8, 1996. He also failed to appear for a scheduled appointment at Reach Up on October 14, 1996, even after it had been rescheduled twice when the petitioner had called for him requesting that it be reset. Six and a half hours after the third scheduled meeting on October 14, the petitioner called the Reach Up counselor to say the father could not get up that early.⁽¹⁾

Following the petitioner's phone call the counselor notified the Department that the father should be sanctioned for his refusal to participate in Reach Up as required. On October 22, 1996, the Department notified the petitioner that beginning November 1, 1996, her ANFC would be decreased because the father had failed without good cause to participate in Reach Up.

The notice from the Department to the petitioner did not include any notification or information regarding the length or conditions of the father's sanction from Reach Up. At the hearing, which was held on November 15, 1996, the Reach Up counselor testified that she had orally informed the father that the sanction, which was the father's first in the program, would be purged as soon as he returned to Reach Up and complied with all the directives of his counselor. However, the petitioner testified that this was the first that she had heard of this provision, and as of the date of the hearing the father had not returned to Reach Up.

ORDER

The Department's decision is affirmed, except that the effective date of the reduction of the petitioner's ANFC is changed from November 1 to December 1, 1996.

REASONS

The Reach Up regulations include the provision that the "conciliation process" is triggered when a participant fails to "attend a required educational activity" of the program without good cause. W.A.M. § 2349.4. There is no question in this case that the father was properly summoned to begin the conciliation process.

W.A.M. § 2350.2 includes the provision that the conciliation process will be determined unsuccessful and sanctions imposed when: "the participant has exhibited a pattern of behavior demonstrated in a series of actions from which refusal to participate can be reasonably inferred". In this case, based on the above findings regarding the father's actions (and inactions), it must be concluded that the counselor's determination that the father had refused to participate in Reach Up was reasonable.

The regulations further provide that the sanction for such refusal to participate shall be the exclusion of the participant's needs from the household's ANFC grant. W.A.M. § 2351.1. For the participant's first such occurrence, the length of the sanction is "until he/she complies". *Id.* Inasmuch as the substance of the Department's decision in this matter is in accord with the regulations it must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

However, W.A.M. § 2143, includes the following provisions:

Applicants for and recipients of assistance or benefits (except applicants for General Assistance) shall be furnished, prior to implementation of any decision affecting their receipt of such aid or benefits, a written notice which:

1. Specifies the type of actions to be taken, identifies the programs affected; and explains the action with reference to dates, amounts, reasons, etc.
2. Includes clear explanation of individual rights, to confer with Department staff to request reconsideration of a decision, and to appeal and request a fair hearing. (See also Welfare Administration Manual--Review, Appeal, Fair Hearing)

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Moreover, the Reach Up regulations describing the "conciliation process" include the following:

The participant must be notified in writing of the reason(s) for the determination of reduction of earnings or failure or refusal to accept or continue participation or employment without good cause, a description of the conciliation process, the right to have a representative present at the conciliation conference, and the period of ineligibility that will be imposed if conciliation is unsuccessful.

As noted above, the notice the Department sent the petitioner on October 22 contained no information regarding the length or conditions of the father's ANFC sanction. It only stated that the petitioner's ANFC was being reduced effective November 1, 1996, due to the father's failure to participate in Reach Up. The petitioner did not know until she got to the hearing (on November 15) that the sanction could be purged simply by the father's return to Reach Up and compliance with the program requirements.

The Reach Up counselor stated that she had orally informed the father of the sanctions, but there is no evidence that the petitioner was ever so informed, or that the Department ever provided either the petitioner or the father with a written explanation of the sanctions.

In this case the Department's failure to notify the petitioner of the conditions of the father's sanction cannot be considered inconsequential or de minimus. Although the father's irresponsibility in this matter appears to be reprehensible, the lack of adequate notice to the petitioner deprived her of the opportunity to confront the father regarding the effect of his continued nonparticipation and to try to persuade him to comply--perhaps, in time to avoid any loss of benefits.

Therefore, the effective date of the Department's decision cannot commence until it is found that the petitioner had sufficient notice of the full effect of the Department's decision.⁽²⁾ Inasmuch, however, as the petitioner was fully informed of the sanctions at her hearing on November 15, 1996, the effect of the Department's lack of notice to her must be considered "cured" as of that date. Therefore, the Department's decision in this matter need be modified only by delaying the effective date of the reduction of the petitioner's ANFC to December 1, 1996.

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1. It is noted for the record that the petitioner lives within easy walking distance of the Reach Up office.

2. See Fair Hearing No. 12,699.