

lived with her aunt and grandmother. At that time, the petitioner asked for an exemption from Reach Up requirements to care for her grandmother who had a recent leg amputation. PATH determined that the petitioner was not needed to care for her grandmother both because her aunt was available to do so and because the grandmother was eligible for home care services. However, the petitioner was released temporarily from her work requirements to give her time to "figure out" her situation. She was told by PATH that she would soon be expected to accept subsidized community service work for about 8-10 hours per week. The low number of hours required is based on the fact that the petitioner only receives \$222 per month in RUFA benefits due to child support payments made directly to her and the Social Security benefits received by her child.

5. The petitioner did engage in a community work job beginning January 22, 2001. However, she stopped working at the end of February and presented PATH with a statement from her physician that she could not drive for two or three weeks. She was exempted from mandatory work requirements until the end of March. At the end of March 2001, the petitioner said she still could not drive so she was sent for a medical consultation by PATH. That medical consultation resulted in a

further two month medical exemption for the petitioner until June 15, 2001.

6. As the end of the exemption period approached, the Reach Up case manager in charge of the petitioner's case set up an appointment for her to talk about her future work situation. The appointment was scheduled for June 4, 2001 but was rescheduled to June 6. The petitioner did attend that meeting and was told by the case manager that new RUFA regulations about to take effect would not allow any more medical exemptions for persons who were not determined to be disabled by Medicaid or Social Security. As of July 1, 2001, the petitioner would have to either become involved in a new job search or become a client of Vocational Rehabilitation. The petitioner agreed that she was no longer hampered by medical problems but did not make it clear which program she wished to join.

7. The case manager called the petitioner to set up an appointment on July 6, 2001 to start a program but the call was not returned. On July 12, 2001, an appointment was set for July 24th (the delay was caused by the case manager's vacation) the purpose of which was to set the petitioner up in either a work or Vocational Rehabilitation program. The petitioner left a message on July 20th that she could not attend the meeting due to a family emergency. Her father was

in the hospital in Florida and the petitioner went there to be with him.

8. The case manager left a message that she needed to hear from the petitioner by August 1, 2001. When she had heard nothing by August 6, 2001, the case manager called the petitioner and found that she had returned to her home and was getting her son ready for school. She spoke with the petitioner again by phone on August 7 and August 8 to reiterate that she needed to assign the petitioner either to a Reach Up work program or to the Vocational Rehabilitation Program. The petitioner said that she thought she could work if she could control her blood pressure but that she could not do any work activities as long as her father was sick. She said she needed to be available to go to Florida on a moment's notice. The conversation ended suddenly and with no resolution.

9. The case manager mailed the petitioner a letter on that same day setting up a "conciliation" meeting for August 14, 2001. The petitioner attended the meeting. The case manager told the petitioner at that time that if she chose to work rather than go to Vocational Rehabilitation she would initially be involved in a subsidized community service job for 8-10 hours per week, that she would be near a telephone and would be given the flexibility to go to Florida if her father needed her. The petitioner reiterated that this was

not satisfactory to her and that she needed to be at home twenty-four hours per day to wait for a call from her father. The petitioner stated that she would not work and was going home.

10. On August 15, 2001, a RUFA program specialist, at the request of the case manager, notified the petitioner that she had been determined to have overtly refused to cooperate with program work requirements, that she had not shown good cause for doing so, that conciliation had failed and that she would be sanctioned beginning September 1, 2001 by reducing her RUFA grant by \$75 per month until she agreed to comply with work requirements.

11. The petitioner reiterated at the hearing that she would not engage in work activities so long as her father was not well. She stated at the hearing--held on September 12, 2001--that she did not know if her father was still living because her phone had been out of order for a few days. It was too hectic, in her view, to have to return home to gather her belongings before leaving for Florida if she should receive a call at work that her father needed her. The petitioner raised, in addition, a second reason for not working which is that she drives her son from school to his day care a mile away. She will not allow him to ride the bus or any other persons to transport him because he does not like strangers. She had not actually looked into what other

arrangements might be available to transport him from school to day care. Even if she could resolve this problem, the petitioner insisted she would still not be able to work due to her father's illness.

ORDER

The decision of PATH to sanction the petitioner for overt refusal to engage in mandatory work activities is affirmed.

REASONS

The petitioner does not dispute that she is currently in a mandatory work status under the RUFA regulations and that she is currently physically able to work. See W.A.M. 2363 et seq. Neither does she dispute that she has been provided with sufficient notice of the requirements and sufficient opportunities to work out her grievances with PATH. See W.A.M. 2371. She agrees that her current noncompliance is the result of her overt refusal to engage in subsidized community service work. See W.A.M. 2370. She argues, however, that she should be excused from her non-compliance because she has good cause for not participating in work requirements.

The RUFA regulations define non-compliance, in pertinent part, as a refusal by a participant to participate in FDP (Family Development Plan) activities, including job referrals. W.A.M. 2370.1. The regulations do excuse noncompliance from

participation in Reach Up activities if the noncompliance is "supported by good cause". W.A.M. 2370. Good cause is defined as "circumstances beyond the control of the participant". W.A.M. 2370.3. Good cause for failing to comply with a Family Development Plan requirement, such as accepting a subsidized community service job, includes the following provisions:

Good Cause For Failing to Comply with an FDP Requirement

1. The participant, after making a good-faith effort, was unable to arrange transportation to or from the place of employment or FDP activity or child care essential for employment or participation in the activity, and the participant informed the employer or appropriate person as soon as possible.

. . .

5. A family emergency requiring the participant's immediate attention, such as death, illness, or injury of a family member, or the participant's own illness prevented the participant from complying with a requirement, and the participant notified the employer or appropriate person of the situation at the earliest possible moment.

W.A.M. 2370.32

The petitioner's principal argument is that she could not participate in a part-time job activity because of her father's illness. The facts of the case, however, do not support this contention. The petitioner presented no evidence that she was needed to care for her father in his illness on a daily basis. If that were the case, surely she would have

stayed in Florida. The petitioner indicated that she may be needed to care for her father on a moment's notice. While that may be true, she did not offer any convincing information on why she could not receive that notice at a job site as well as at home. Her argument that it was too much trouble to return to her home from a job site before leaving for Florida is simply unconvincing. Further undermining the petitioner's contention that she must stay by her own telephone is the fact that she had not made any attempt to check on her father's situation when her phone was not working for several days. The petitioner's need to be next to her home phone in order to care for her father is not substantiated by the facts. It cannot be found on this evidence that the petitioner was prevented by her father's illness from participating in a part-time work requirement.

Neither do the facts support the petitioner's secondary claim that she is prevented from working because she is unable to arrange transportation from school to child care for her son. The facts make it clear that the petitioner has never made any attempt to arrange such transportation for her son. While it is undoubtedly more comfortable for the child to be transported the mile from school to daycare by his own mother, the petitioner's assertion that the child would be harmed by any other person transporting him is unreasonable and is not supported by any evidence. It cannot be found, therefore,

that the petitioner was prevented from working by her inability, after a good-faith effort, to arrange transportation for her son to daycare.

Since the petitioner has not shown that she had good cause for failing to comply with Reach Up requirements, her overt refusal to take part in job activities coupled with PATH's inability to successfully resolve the issue through conciliation forms the basis for immediate sanctions. W.A.M. 2370.12. The regulations require that PATH impose a "fiscal sanction by reducing the financial assistance grant of the sanctioned adult's family" where noncompliance is unexcused. W.A.M. 2372. The fiscal sanction is a \$75.00 reduction of the grant for each of the first three months with the amount at least doubling the fourth month. W.A.M. 2372.2.

PATH's proposed sanction of the petitioner's RUFA benefits starting September 1, 2001 was correct under its regulations and its action must be upheld by the Board. 3 V.S.A. § 3091(d), Fair Hearing Rule 17. The petitioner is reminded that this sanction will continue and rise dramatically during the fourth month if she does not begin to comply with requirements. The petitioner should be aware that she can "cure" or remove the sanction at any time by "participating fully and satisfactorily for two weeks in the required activities". W.A.M. 2372.12. She is encouraged to

contact her case manager immediately if she wishes to explore this option.

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