

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 18,226  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) terminating his Food Stamps for failure to cooperate with work requirements. The issue is whether the petitioner should be exempted from work requirements for medical reasons.

FINDINGS OF FACT

1. The petitioner is a forty-three-year-old man with a long work history as a carpenter and construction laborer. He had a mild stroke in 1994 after which he was retrained as a truck driver. He injured his back in 2001 and has not worked since that time due to back spasms when driving. He applied for expedited Food Stamps in July of 2002. At that time the PATH worker told the petitioner that recipients had to participate in work activities unless they were medically exempted. The petitioner said he had a number of medical problems which keep him from working. The PATH worker gave

the petitioner a medical exemption form which the petitioner's returned on July 8, 2002.

2. The petitioner's physician checked "yes" to the question asking whether the petitioner had a medical problem that would exempt him from training or employment requirements. He stated that the petitioner had injured his upper back in October of 2001 and had a current ankle sprain. He expected the situation to continue for three more months. However, he also said that the petitioner could work full time in sedentary employment so long as he could change positions.

3. The PATH worker reviewed this form and told the petitioner that it was insufficient to exempt him from work requirements because it said he could engage in sedentary employment. On July 11, 2002, the petitioner signed a copy of his "work registrant's responsibilities and rights" which set up an interview with DET on July 17, 2002. This document advised him that he had to go to all scheduled interviews or call DET if he could not attend. He was also told that he only had to accept jobs that were suitable for his physical condition.

4. The petitioner reported for a group orientation meeting at the Department of Employment and Training (DET) on July 17, 2002 at which time a DET counselor explained the

rules of the work search program and gave each participant a written summary of the program requirements and expectations. Featured prominently at the top of the written summary in bold letters was the requirement to search for work for 20 hours per week and to bring the work search forms to the office every Wednesday between the hours of 1:00 p.m. to 3:30 p.m. The written summary also advised participants to inform the DET counselor if they matched a "list of exemptions" including the following:

"If your physician states that he/she does not want you working, i.e., due to an operation or injury. If your physician certified that you are physically or mentally unfit for employment, a medical form has to be sent to PATH from your physician stating how long you will not be working."

Participants were given the DET counselor's telephone number and told to call if they could not make the Wednesday reporting day or had other questions. Participants were warned that failure to call or show up on Wednesdays would lead to a referral to PATH for noncompliance which could lead to the loss of Food Stamps.

5. The petitioner did not notify the DET counselor that he might be eligible for an exemption. The petitioner's DET counselor was on leave during several of the following weeks and the Wednesday work search meetings were conducted by an

assistant. Records kept by the assistant showed that the petitioner never came to the office during the Wednesday reporting period and never communicated by telephone or in writing that he was having any difficulty in doing so to PATH.

6. The DET counselor discovered this situation when she returned from her leave in September 2002. On September 20, 2002, she sent the petitioner a "conciliation" letter advising him that he should have filed eight work search forms by that time but that he had filed none. He was instructed to call or come into the DET office before September 27, 2002 to discuss the matter or a notice of non-compliance would be sent to PATH. The petitioner was told again that he should let DET know if he was under a doctor's care and whether there were restrictions on his working which would have to be documented. A copy of this letter was also sent to PATH. The petitioner says he tried to contact DET but DET had no record of such a contact and notified PATH of the fact on October 2, 2002.

7. On October 3, 2002, PATH mailed the petitioner a notice that his Food Stamps would be terminated on November 1, 2003 due to his failure to comply with Food Stamp work requirements. The petitioner was advised that he could reapply after one month or as soon as he removed the disqualification by participating in work requirements.

8. Shortly after this letter was mailed, PATH received a new medical exemption form from the petitioner's physician (not the same one who filed the original exemption form in July) saying essentially the same as the July statement. Again the physician checked "yes" to the petitioner's having a medical condition that would justify exemption from training or employment due to back pain that was expected to last for one month. This physician also said that the petitioner could work full-time in other employment so long as there was no lifting or prolonged sitting and standing. She characterized his "options as extremely limited."

9. The PATH worker reviewed that report and decided that it was still insufficient for an exemption because the physician had said he could do full-time employment with limitations. She felt it was up to DET to refocus him on a different line of work. She did not communicate this determination to the petitioner but she did tell him that the original determination that his Food Stamps would stop on November 1 would stand. The petitioner filed a request for a fair hearing on December 24, 2002.

10. At the hearing held on April 10, 2003 the petitioner presented more medical evidence from his physician dated February 26, 2003. That document said that the petitioner

suffers from persistent upper back pain that was treated through physical therapy and medication. The physician says the petitioner never took the medications and stopped physical therapy because of insurance problems. He does experience pain in his upper spine which is better with rest and worse with lifting. She did not feel he could return to carpentry or truck driving because they required lifting or sitting in one position for a prolonged period of time. She did feel the petitioner could perform "sedentary" work as that term is defined in the Social Security regulations:

Work involving "lifting no more than 10 pounds at a time and occasionally [up to one third of an eight-hour work day] lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties.

11. The petitioner does not agree with his physician that he can do sedentary work due to his constant pain and difficulty in using his legs which tend to buckle. He says he also has personality problems which make it difficult for him to deal with people. He asked to leave the record open to provide further medical evidence but provided nothing within two months of the hearing. He also pointed out that in spite of his documented restrictions, DET notified him of a

demolition and reconstruction position which was available in November of 2002.

12. Based on the medical evidence presented at hearing, it must be found that the petitioner's condition is as his two physicians have said and that he is capable of doing full-time sedentary work.

ORDER

The Department's decision is affirmed.

REASONS

When an adult without children applies for Food Stamp benefits, regulations in that program require that PATH screen the applicant to see if it is appropriate to refer that individual for the work program supervised by DET. F.S.M. 273.7c(2). In the petitioner's case the work program is an eight-week intensive (20 hour per week) supervised work search. F.S.M. 273.7f(1)(i). The regulations contain a number of exemptions from participation in work programs, including that for persons who are "physically or mentally unfit for employment". F.S.M. 273.7b(1)(ii). An exemption under this regulation requires medical certification from a licensed physician which is paid for by PATH. F.S.M. 273.7q(2)(b). "Unfit for employment" is not further defined

in the regulations. Forms used by PATH to make this determination demonstrate that it has a policy of using criteria for engaging in substantial gainful activity found in both the state Medicaid and federal Social Security programs. 20 C.F.R. § 404 et seq. The petitioner does not argue that the criteria used are illegal or unreasonable.

The evidence shows that the petitioner has been unable to demonstrate that he meets PATH's criteria for "unfit for employment." The petitioner has presented three medical reports to PATH which show that he is unable to return to his prior employment as a construction worker or truck driver. However, those reports also show that the petitioner is able to engage full-time in sedentary employment so long as it does not require unrelieved sitting or standing. The petitioner's physician may be correct that the limitation to this type of employment significantly limits the petitioner's employment options but it does not completely eliminate those options and does not excuse the petitioner from engaging in a search for such work. Under the regulations, the petitioner will not be required to accept work that is physically unsuitable for him.

F.S.M. 273.7i(2)(ii).<sup>1</sup> It cannot be found that PATH erred in determining, based on the evidence provided by the petitioner himself, that he was not eligible for a medical exemption.

Because the petitioner was not eligible for an exemption and did not follow through with his work requirements, he was sanctioned for a month or until such time as he participated in the work requirement. The petitioner takes issue with the process employed in determining that he should be sanctioned, particularly the fact that he received no formal notice that his medical reports were insufficient to exempt him from the work requirement.

The regulations do not call for a formal notice of and appeal right for this particular determination. The regulations require that referral to DET be made based on the exemption decision. F.S.M. 273.7c(1). A subsequent refusal or failure to comply results in a conciliation letter in which the participant is given an opportunity to be heard with regard to the reasons for his refusal or failure. F.S.M. 273.7g(1)(ii). If the participant does not take advantage of

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<sup>1</sup> The petitioner presented evidence that in November 2002, DET sent him information regarding a heavy labor job for which he is physically incapable. Presumably the petitioner put this into evidence to show that DET would require him to do work that is beyond his capabilities. However, the petitioner never attended an interview with DET at which he could have explained his limitations.

this opportunity or if PATH finds after the conciliation discussion that there was not "good cause" for failure to comply, a notice of adverse action is sent to the petitioner telling him of the sanction. F.S.M. 273.7g(1)(iii). That notice of adverse action tells the participant of his right to a fair hearing, at which time he may appeal "state agency actions such as exemption status . . . if the individual . . . believes that a finding of failure to comply has resulted from improper decisions" on this matter. F.S.M. 273.7g(1)(vi). If the participant appeals within the advance notice period, that is before the action is taken, benefits continue pending the outcome of the hearing. F.S.M. 273.15k(1).

The regulations above offer several opportunities to be heard with regard to any claimed exemption before Food Stamp benefits are sanctioned. The petitioner here could have called the PATH worker for a further explanation of why he was not exempted from work. He could have attended his work search appointment and told the DET counselor that he felt he was not physically able to perform any job. That assertion would have resulted in an internal review or conciliation meeting at which he could have discussed the reasons he felt he could not work and could have received further explanations of PATH's referral decision. When he received the adverse

notice action for failure to engage in work search and the conciliation process, he could have appealed within the first ten days or so and continued to receive his benefits while his appeal was pending.

The petitioner, however, did not take advantage of any of these opportunities. He repeatedly failed appointments, ignored letters and did little or nothing to communicate with PATH for over eight weeks while he continued to receive Food Stamp benefits. He did not appeal the sanction notice for over ten weeks after it was received by him and appears to have done nothing in the meantime to talk with his worker or attempt to cure the sanction. When he did finally take advantage of the opportunity to be heard, he could not show that PATH's original decision was incorrect and insisted that the medical evidence he himself had presented was incorrect.

It cannot be found on these facts that the petitioner was denied his rights under the regulations or under general due process of law requirements. See Goldberg v. Kelly 397 U.S. 254 (1970). He had several opportunities to be heard before his Food Stamps were sanctioned but disengaged from the process that might have ameliorated his concerns. It has been shown now that PATH was correct in its determination that he was not exempt and the petitioner has not lost any benefits to

which he would have been entitled. As the decision of PATH is consistent with its regulations, the Board is bound to uphold its decision. 3 V.S.A. § 3091(d), Fair Hearing Rule 17. The petitioner is free to reapply at any time and to present new evidence of his lack of fitness for work if he is able to obtain a medical opinion supporting his contention.

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