

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,377
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) sanctioning her Reach Up Financial Assistance (RUFA) grant because her husband failed to engage in work activities.

FINDINGS OF FACT

1. The petitioner, her husband and children are all RUFA beneficiaries and are eligible for a grant of \$740 per month. The petitioner's husband is the designated head of household and has a history of non-compliance with work activity requirements which resulted in a sanction of the family's grant in November of 2001 and again in September of 2002.

2. The petitioner's grant is currently sanctioned again in the amount of \$75 per month. The husband failed to show up at a meeting with the Reach Up counselor scheduled for January 10, 2003. He was sent a letter to come for a "conciliation" meeting on January 20, 2003. On January 17, the petitioner

left a phone message for the Reach Up counselor telling him that her husband had gone to New York state for a couple of weeks to look for car parts and would call him when he got back. The counselor called the petitioner back and encouraged her to get her husband back for the meeting on the 20th. The petitioner says that her husband did see the original notice telling him to come in on January 10 but said he did not want to go to the meeting or do the Reach Up program. She called him at his mother's home in upstate New York to give him the message about the necessity of attending the January 20 meeting. The petitioner's husband did not attend the conciliation meeting. The Reach Up counselor concluded there was not "good cause" for the failure to attend the January meeting and sanctioned him for a second month beginning in February of 2003.

3. On January 21, 2003, PATH sent the petitioner a reminder that her husband had another appointment scheduled for February 3, 2003 at 3:00 p.m. The petitioner was advised to call immediately if the appointment could not be kept and was told that the meeting had to be held before the 16th of the month or the family would not receive their benefits for that month unless there was "good cause" for not doing so.

4. On January 22, 2003, PATH sent the petitioner another notice saying that the \$75 per month sanction would be placed on the grant for February 2003. The notice reminded her about the meeting scheduled for February 3, 2003. On January 23, 2003 PATH sent a notice to the petitioner advising her of the exact amount of benefits she would receive in February based on her own income and the sanction. The petitioner's housing benefits were also put on "vendors" as part of the sanction.

5. On January 24, 2003, the petitioner called her eligibility specialist (not the same person as the Reach Up counselor) to say that her husband had left the household. An appointment was set up for January 30 to discuss this report and the worker mailed the petitioner a formal notice of the meeting along with three "verification of absence" forms which she was to return by the time of the meeting.

6. At the meeting, the petitioner said that her husband had called recently and said he was not coming back. She said she had been unable to reach him since then. She brought in the three verification forms. The first was from a next door neighbor who said that the petitioner's husband had "left and gone to New York." The second was from another neighbor who said the same thing without amplification. The third was from

a friend, A.B., who said the petitioner's husband was in New York and that the reason he was there was "nobody's concern." The eligibility specialist considered these verifications to be inadequate because two of them contained no telephone number for a follow up call and the third had a number at which no one could be reached. The petitioner could not provide an address for her husband in New York. The petitioner was notified in writing that she needed to provide further proof that her husband was not returning to her home by February 10, 2003. On February 4, 2003 a "second request" notice was sent to the petitioner saying that the worker had been unable to contact anyone about the situation and giving the petitioner until February 14 to provide further verification. She also informed the petitioner that she could get assistance in obtaining verification if she needed it.

7. On February 6, 2003, a Vocational Rehabilitation Specialist who works with the petitioner was in the vicinity of her home and made a spur of the moment decision to stop in to see her. She went to the petitioner's door which was answered by a man who had previously introduced himself as the petitioner's husband. He told her that the petitioner was at work. The Vocational Rehabilitation Specialist mentioned this encounter to the PATH eligibility specialist that same day.

8. Based on the lack of verification of the husband's whereabouts and the fact that he had been seen at the petitioner's home on February 6, the worker did not believe that the petitioner's husband was actually out of the household. She sent the petitioner a notice on February 7, 2003 advising her of that fact and that her husband would not be taken out of the household. The PATH eligibility specialist advised the petitioner that her husband had to make an appointment to see the Reach Up counselor before the 16th of the month or she would forfeit her February benefits. On February 14th the counselor wrote another letter saying that the petitioner was running out of time to verify that her husband was gone and suggested that she could provide collateral statements from a landlord, postmaster or non-relative with a phone who could verify the information. No further information was received in response to this letter.

9. The petitioner's husband failed to attend the February 3, 2003 meeting scheduled for him or to reschedule it for another time before February 16. The petitioner was notified by letters dated February 18 and 19, 2003 that her Reach Up grant would close as of March 1 because of her husband's non-attendance at the meetings. The petitioner was advised that a meeting held before the end of the month would

lead to the reinstatement for March but that the February benefits were forfeited unless she could prove "good cause" for not attending the sanction meeting by the 16th. The petitioner appealed that decision.

10. The petitioner was not home on February 6, 2003 when the Vocational Expert came to her home because she was at work. Her children were being cared for by a friend, A.B., and the petitioner says she was unaware that her husband may have been there.

11. The petitioner says that her husband left January 17, 2003 and returned home the 26th or 27th of February, 2003. She says that she is not aware that her husband returned home at all during that period of time. The family reapplied for benefits on March 11, 2003 and was found eligible but remains sanctioned for non-cooperation.

12. The petitioner's husband and his friend, A.B., were subpoenaed to testify at a continuation of the hearing.

13. The petitioner's husband said that he went to New York on February 4, 2003 and was driven there by his friend A.B. He went in order to see if he could take care of some fines in connection with a DWI conviction and deal with some unpaid child support which would enable him to get his driver's license back. He said he was hoping to get some odd

jobs while he was there which had been difficult to come by in Vermont without a driver's license. He said he stayed with his parents for a couple of nights and then childhood friends. He did not know when he was coming back. He admits that he was at his home on February 6, 2003 and answered the door for the Vocational Rehabilitation specialist but says he was only there to pick up some more clothes and medications and did not see his wife. After a few weeks when he couldn't get anything accomplished in New York, he had a friend drive him back to the petitioner's home around March 5, 2003. He says he did not know that he was supposed to attend a February 3, 2003 meeting with PATH. He does feel that going to these meetings is a waste of time and did not call at any time to say he was not coming to a meeting or to reschedule a meeting.

14. A.B. testified that he drove the petitioner's husband to New York in March. He sometimes baby-sits for the petitioner by picking her children up from the school and taking them to her home. He says he was at the home the day the VR worker came although he did not see her and was only told of the visit later. He says he saw the petitioner's husband arrive about 4:00 p.m. with a friend from New York and that he took his clothes out of the home that day. He says he did not speak with him other than to say hello. He says he

also saw the petitioner's husband a week later when he came to get some more clothes. Although he had a calendar before him he could not testify consistently about what day of the week he saw the petitioner.

15. The testimony of the husband, wife and friend are so inconsistent that it must be concluded that one or all of them are not telling the truth about the situation. The evidence offered by the husband was inconsistent with that of his wife and the records of PATH. The evidence offered by A.B. was confusing and implausible. While the petitioner's testimony that her husband had gone to New York state in January is not implausible, there was no convincing evidence offered by anyone that the petitioner's husband was there for more than two or three weeks. It makes no sense that the petitioner's husband would importune a friend to drive a round trip of ten hours every several days beginning February 6 to retrieve belongings. Most importantly, no evidence was offered that the petitioner's husband went to New York intending to leave his wife and children. By the admission of all parties, the petitioner's trip was made to take care of some business and for the purpose of obtaining some employment. There is no evidence that the petitioner had decided not to live with his

wife and children any longer and to take up residence in a different locale.

ORDER

The Department's decision that the petitioner's assistance group had forfeited its RUFA grant for the months of February and March 2003 (up until the time of the March 11 reapplication) is upheld.

REASONS

PATH's RUFA regulations call for the "sanction" of participating adults who fail to comply with "services component requirements", including job activities, that are not successfully resolved through conciliation. W.A.M. 2370, 2371 and 2372. The petitioner's husband does not dispute that he purposefully failed to comply with requirements to meet to discuss his work progress in January of 2003. The evidence indicates that he knew or should have known of these meetings and just decided to ignore them. The petitioner put on no evidence that her husband had a compelling reason to be in New York and never made any attempt to reschedule as requested by PATH. As such, PATH acted within its regulations when it continued to sanction the amount of the petitioner's grant in February of 2003.

The regulations go on to impose the following requirement on sanctioned adults:

To receive any financial assistance, including vendor rent payments, a sanctioned adult must meet with the case manager at least once per month. . . An unexcused failure to meet with the case manager may result in closure of the family's grant and forfeiture of that month's financial assistance.

The purpose of the meeting shall be to assess the individual and develop the family development plan, when such tasks have not been completed; reassess or review and revise the FDP¹ as appropriate; and encourage the participant to cure the sanction.

The meeting with the case manager shall take place by the 16th of each month; otherwise, Reach Up financial assistance terminates, and that month's benefit is forfeited. In any given month, the case manager may waive the meeting requirement if, in the judgment of the case manager, severe illness, death in the family, or other equally compelling reason warrants an exception.

A participant is encouraged to notify the case manager on or before the date of a meeting if unable to attend as scheduled. The case manager shall reschedule the meeting to be held as soon as administratively possible and no later than the 16th of the month.

If the sanctioned individual attends a meeting after the 16th but before the end of a month, benefits for the following month are reinstated at the appropriate sanctioned level, and, if the individual demonstrated good cause for failure to attend the meeting by the 16th, the department will disburse the current month's benefit.

W.A.M. 2372.4

¹ Family Development Plan.

The petitioner received ample notice that her husband was expected to attend the meeting on February 3, 2003. However, he did not attend the meeting on that date or contact the Department in any way with regard to rescheduling the meeting at another time that month. Even if the petitioner's husband were making trips to New York, it appears that he was back in Vermont on at least two, if not several, dates before February 16th and could have attended his meeting if he so desired. The petitioner's husband made it very clear that he does not think these meetings are valuable and does not wish to attend them. He has shown no "good cause" for failing to attend the meetings. As such, PATH was justified under its regulation to determine that the family had forfeited its grant in February for failing to attend a meeting before the 16th of the month and for March for failing to attend a meeting during the latter half of February.²

The petitioner tries to avoid this penalty by claiming that her husband was "absent" from the family group during late January and all of February of 2003 and should not have been considered a part of the assistance group. Under PATH's regulation, a parent must be considered part of the assistance

² As noted above, the entire family reapplied and was found eligible for benefits under a new grant on March 11.

group when he "lives in the home with the child" and is part of the financial unit. W. A.M. 2242. That same regulation says that a parent whose residence in the home is interrupted by "employment away from home" must still be included in the assistance group. The evidence in this case is inconclusive as to whether or how long the petitioner was out of town. The evidence does indicate that if the petitioner were indeed absent from his home on any days in January or February of 2003 it was solely for the purpose of attending to personal business and seeking employment out of the state and was of very brief duration. This is not sufficient evidence to conclude that the petitioner's husband had left the household and was no longer residing with his wife and children. If this were sufficient evidence, then either a recipient or PATH could remove an adult member from household assistance group every time he or she was out of the house for any indeterminate period of time, however brief. It must be concluded that the petitioner's husband continued to be a member of her household throughout the period at issue and that he was subject to the above regulations requiring work activities.

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