

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,416
)
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 for alleged failure to comply with work search requirements.

FINDINGS OF FACT

1. The petitioner has been on RUFA benefits since at least 1997 and has two pre-school children. Work requirements became mandatory for the petitioner in March of 2002 when she reached the fourth or "employment phase" of her work progression. However, there was a considerable delay on the part of PATH in implementing a work plan and she was not required to do a work search until November of 2002. At that time, PATH formulated a "Family Development Plan"(FDP) for the petitioner that was signed by PATH and the petitioner on November 12, 2002. That plan had as an employment goal for the petitioner "fast food management" which is a field in which she has experience. As steps toward that goal, the

petitioner was to receive dental work and car repair or a new car through the Good News Garage. The petitioner was to meet with a counselor at DET to find a fast food management job and to stay in touch with her worker on a monthly basis. The petitioner was specifically required to set up an appointment with DET before November 15, 2002 and to engage in a twenty-hour per week job search. If the job search did not result in employment within four weeks, the petitioner would be placed at a community service project.

2. The petitioner did meet with the DET counselor but did not engage in a work search or contact her worker during the months of December 2002 or January 2003. The worker sent the petitioner a "conciliation" letter to meet with her on February 4, 2003 to see whether there was "good cause" for her failure to meet the agreement.

3. The petitioner did attend that meeting and told her worker that she had been working on web design at home and had trouble finding day care for her young children to do the job search. She said that she had contacted the DET worker twice and had done three weeks of work search but could not go back due to car trouble. After the meeting, the two agreed to a new plan which would address the petitioner's needs. She was referred to the Parent Child Center in Springfield and Norwich

to find day care, was to meet the DET counselor again and begin a twenty-hour work search, was to secure a twenty-hour per week job "as soon as possible" and was to submit a business plan within ten days regarding her web page design business. The worker believed that the time had long since passed for approval of a self-employment plan but asked for the information on the outside chance that it might be possible. The worker and the petitioner agreed that she would go to the DET office, which was nearby, that very day to meet with a counselor.

4. In March of 2003, the worker received information that the petitioner had not gone to DET to begin a work search. She had not sent in a business plan either. On March 12, 2003, the worker recommended a grant sanction for the petitioner for failure to comply with the Reach Up requirements and the conciliation agreement signed February 4, 2003.

5. On March 12 and 13, 2003 the petitioner was mailed two notices, telling her that her grant would be sanctioned by \$75 starting on April 1, 2003 for failure to comply with Reach Up requirements. She was advised that she had to attend a monthly meeting with her worker before the 16th of April in

order to receive any benefits for April and was given an appointment for April 1, 2003 to meet that requirement.

6. The petitioner came to the meeting on April 1, 2003 as directed. She told the worker she had been unable to obtain child care and was limited to looking for work or working only when her fiancée was not working (between 1:00 p.m. and 7:00 p.m.) and was able to care for her children. She had tried working at newspaper delivery but that job only lasted a day or two due to the poor condition of her car. She had not gone to DET because, the petitioner said, she thought DET was supposed to contact her. The worker explained to her that she had to do the work search through the DET counselor and on their forms because PATH needed verification of her work search. The worker told her that there was a community service job available in her town at a thrift store which could be used to meet her work requirement. The petitioner was interested in the job if she could work 8:00 a.m. to noon. She had not sent in a business plan because she thought it was a waste of time and money. She indicated that she wanted to file an appeal of the sanction.

7. The worker followed up this conversation by calling the day care centers to which the petitioner had been referred. They had no record of the petitioner having

contacted them for assistance. She also called the thrift store which could not accommodate the hours petitioner was willing to work.

8. On April 8, 2003, the worker sent a letter to the petitioner telling her that the thrift shop job would not fit the requested hours and advising her that "the options that are now available to you are as follows: 1) stay sanctioned; 2) obtain employment; 3) get childcare (list attached) and be placed at the thrift store . . . for 20 hours per week (plus 5 hours of job search)" between the hours of 10 and 3, four days per week. The petitioner was asked to call on April 11 to discuss her options. Attached to this letter were the telephone numbers of five local registered day care providers in her town or near her town.

9. The petitioner was notified by letter dated April 1, 2003 that the May meeting to retain her benefits would be held on May 1. On April 2, 2003 she was notified that her grant would continue to be sanctioned for April and that the sanction would occur again in May because she had not taken actions to remove the sanction. She was provided with budgets showing how her benefits would be figured for both months.

10. The petitioner attended her meeting on May 1, 2003 which was the same day as the fair hearing. At that time the

petitioner said that she had spent a good deal of time working on her web site and looking for employment on her own. She did not want to do a job search through DET because "they keep giving her the run around" although she did not specify what she meant by that. She filled out no job search forms since the conciliation meeting in February. She also said that she had tried all of the day care providers but that the openings she had found were in homes that were "disgusting" and that she would not leave her children with "just anyone." She said for the first time that her biggest problem was her car and that PATH would only help her with car repairs if she actually got a job not if she was just searching for a job. She added, however, that her parents have given her money to keep the car running and it runs now. However, she shares the car with her fiancée and can only use it when he is not using it for work. She believes she is on the verge of finding a job which requires her to work overnight.

11. The petitioner's testimony that she has been developing her web site and looking for some work on her own is credible. However, her allegations that she has diligently searched for but can't find decent childcare and that she misunderstood her obligations to contact DET are not credible. The petitioner clearly wants to do it her own way. Although

she seems to have a car and babysitter available to her in the mornings to do a DET-prescribed work search, she has not carried out such a twenty-hour per week work search and has rejected any supervision by DET in violation of her agreement with PATH. The petitioner cannot be found to have "good cause" for failing to do the agreed upon work search under the supervision of DET.

ORDER

The Department's decision is affirmed.

REASONS

A recipient of RUFA benefits is required under certain circumstances to find employment after a specified period of time on benefits. W.A.M. 2363. The work goal for a single parent with a child under six years of age is employment of twenty hours per week. W.A.M. 2363.3. Recipients are moved through four phases of employment preparation either by virtue of the completion of certain work-related activities or by the passage of a maximum period of time. W.A.M. 2360. Throughout this period of time, the activities are guided by a Family Development Plan (FDP) that is supposed to be developed in the first phase. W.A.M. 2361.

The petitioner entered the fourth, or "employment phase" by virtue of the time passed on RUFA benefits in March of 2002. It appears that the petitioner's FDP for that phase was not prepared at that time but, after much cajoling by the petitioner, was finally readied some eight months later. The petitioner agreed at that time that she would contact DET and engage in a twenty-hour per week work search.

The regulations make it clear that the FDP creates requirements that a "participant must fulfill to avoid sanction." W.A.M. 2361. Those requirements must be reasonable, must be reviewed monthly, and may be modified to reflect current circumstances. W.A.M. 2361. If one of the FDP requirements is a job search, PATH regulations require that the job search be "supervised in an organized program." W.A.M. 2364.2. If the participant fails to meet one of the FDP requirements, a conciliation meeting is scheduled to determine whether there is "good cause" for non-compliance. W.A.M. 2371. A participant may be excused from complying if there are transportation or child care problems if the participant can show she made a "good-faith effort" to obtain the same and "the participant informed the . . . appropriate person as soon as possible." W.A.M. 2370.32. (1) and (9). "Appropriate child care" is considered to be available if

there is a slot with a licensed or registered provider within five miles of the parent's residence at the hours needed.

W.A.M. 2370.33. If no "good cause" is found for the failure to follow the FDP requirements, a sanction may be imposed of \$75 for the first three months. W.A.M. 2372 and 2372.2. In addition, participants are required to meet monthly with their workers before the 16th of the month to report on their work activities in order to receive their grant for that month.

W.A.M. 2372.4. The sanction can be removed by complying with the FDP activity for two consecutive weeks. W.A.M. 2373.12.

The petitioner agreed with the FDP requirements in November 2002 and again in February of 2003 which required her to perform a twenty-hour per week work search under the supervision of DET. She did not call that requirement unreasonable at either of those times or indicate that she had impediments to performing a work search. The petitioner raised both childcare and transportation as problems for her at her conciliation meeting and at the hearing but it appears that she had both a car and a child care provider (her fiancée) for at least twenty hours per week. To be sure, her situation could become more complicated if she actually got employment in the hours during which her fiancée uses the

car,¹ but PATH had committed to helping her obtain her own transportation if she got employment in the FDP. By the petitioner's own admission, registered day care was available in her town but she chose to reject it in favor of care offered by her fiancée. Under these circumstances it is difficult to find that the petitioner has shown "good cause" for failing to follow the supervised work search aspect of her plan.

Alternatively, the petitioner has argued that she has performed a work search. However, PATH's regulations clearly require that work searches be supervised by an organized program and PATH made it clear to the petitioner in the FDP and in the meetings that she was expected to have her work search supervised by the Department of Employment and Training. That supervision was clearly rejected by the petitioner who has not participated in a supervised work search for five months.

Under these circumstances, PATH was justified under its own regulations to impose a \$75 per month sanction upon the petitioner and the Board must uphold its decision. Fair Hearing Rule 17, 3 V.S.A. § 3091(d). The sanction will

¹ It is not clear whether this is the petitioner's car or her fiancée's. If it is her car, the transportation problem is his, not hers.

continue until the petitioner engages in the FDP activity which has caused her disqualification, in this case, a supervised work search. However, it should be noted that the petitioner may be able to have her FDP modified to include her self-employment venture. The petitioner never submitted a business plan because she jumped to the conclusion that it would do her no good even though the FDP modified on February 4, 2003 called for her to supply this information to PATH. While the regulations certainly contemplate that a goal of self-employment should be made part of the FDP at an early enough point that it can be implemented within the work timeframes, see W.A.M. 2364, PATH's admitted failure to develop her plan in a timely manner may be cause to consider her self-employment plan now and to extend the time limits for implementing it. The petitioner is urged to follow through with providing this information to PATH so that it can be reviewed pursuant to the self-employment approval procedures at W.A.M. 2364.²

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² PATH indicated at hearing that it would allow the petitioner to e-mail her business plan in order to avoid the cost to her of printing and mailing it.