

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,031
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) reducing her Reach Up Financial Assistance (RUFA) benefits by \$75 a month as a sanction for her noncompliance with Reach Up work and training requirements. The issue is whether the petitioner failed without good cause to comply with those requirements.

FINDINGS OF FACT

1. The petitioner has been a recipient of RUFA benefits for several years and has a history of problems with compliance with Reach Up. See Fair Hearing Nos. 15,426 and 15,987.

2. After missing a previously scheduled meeting in February, the petitioner attended a meeting with her Reach Up case manager on March 9, 2004. At that time the petitioner signed a **Family Development Plan** in which she agreed to conduct a 5-hour-per-week job search and to accept designated

community service employment for 25 hours a week if she could not find regular employment.

3. On March 14, 2004, the petitioner contacted her case manager by phone saying she had to temporarily leave the area immediately due to a family emergency.¹ The next day the case manager advised the petitioner by phone to provide verification of her travel arrangements.

4. When, after three weeks, the case manager had heard nothing back from the petitioner, on April 6 she mailed the petitioner a notice of a conciliation meeting scheduled for April 14. When the petitioner failed to attend this meeting, and did not call in advance, the case manager notified PATH that the petitioner should be sanctioned for her failure to participate in Reach Up. Later that same day, PATH notified the petitioner that effective May 1, 2004 her RUFA grant would be reduced \$75 a month as a sanction for her noncompliance with Reach Up.

5. On April 16, 2004 the petitioner contacted her case manager at Reach Up and told her that she had been out of town for the last month. The case manager again told the

¹ There is a dispute over the wording of the petitioner's message. The petitioner's case manager testified that the petitioner originally indicated she had to leave the country (the petitioner is of Russian origin) due to a death in her family.

petitioner to provide verification of her travel tickets and the need for such a trip.

6. The petitioner requested a fair hearing on April 21, 2004. At the initial hearing in this matter on May 26, 2004, the parties agreed to continue the matter to present evidence as to whether the petitioner had "good cause" for her failure to participate in Reach Up as of March 14, 2004. However, at that hearing the petitioner agreed to comply with Reach Up in the immediate future in order to "purge" any sanction that could result if she did not prevail at the hearing.

7. A hearing was held on June 16, 2004. At that time the petitioner produced one-way airline tickets from San Diego, California to Vermont showing that the petitioner had traveled that route on April 15 and 16, 2004. The petitioner testified that she left Vermont by car on or about March 15 to accompany her daughter to college in Arizona. As to the "emergency" nature of the trip, the petitioner stated only that her daughter has "special needs".

8. The petitioner's Reach Up case manager testified that because of on-the-job problems over the past several years the petitioner has exhausted all the community service placement options in her area (Burlington) willing to accept her except for the municipal recycling center. The parties agree that

the petitioner reported to the recycling center on June 10, 2004. The petitioner admits that she left the site before starting work that day because she was given a written handout saying that the job would entail lifting and being exposed to dust. She also alleges that she felt "disrespect" from the supervisor when she inquired about placement in the center's office.

9. The Department admits that the petitioner has asthma and a back condition that precludes significant physical labor and exposure to dust. However, the case manager credibly testified that the recycle center is an extremely friendly and accommodating community service employer and has many jobs available that the petitioner could (and several other Reach Up participants do) perform despite such health limitations.

10. The petitioner presented credible evidence that she has applied for many jobs on her own. It is also clear that the petitioner performs significant volunteer work for several community organizations. The petitioner also works sporadically as a Russian language interpreter. Despite this, however, the petitioner has not obtained a regular paying job for several years.

11. The hearing officer deemed the petitioner's testimony as to the need for her one month trip out of state and as to

the circumstances of her not accepting a community service placement at the recycle center to be not credible. It cannot be found that the petitioner has or had any compelling basis not to participate in Reach Up under the terms required of her, and to which she had expressly agreed, either in March and April 2004 or in June 2004 following the initial hearing in this matter.

ORDER

The Department's decision is affirmed.

REASONS

Included in the "types of noncompliance" in the Reach Up regulations is the failure or refusal to "attend or participate fully in (Reach Up) activities." W.A.M. § 2370.1. Section 2372 of the regulations provides: "If a participating adult, including a minor parent, fails to comply with services component requirements, the department shall impose a fiscal sanction by reducing the financial assistance grant of the sanctioned adult's family." The regulations further provide that the conciliation process shall be "determined unsuccessful when the individual . . . fails without good cause to respond to one written notice of a scheduled conciliation conference". W.A.M. § 2371.4. This regulation

further provides that the sanction process begins when conciliation is unsuccessful. The initial (i.e., the first three months) sanction amount is \$75 a month per individual participant.

In this case, even if the petitioner was unaware of the scheduled conciliation meeting on April 14, 2004, it was solely because she left the area for an extended period of time without getting back to her case manager as directed and without making arrangements to check her mail while she was gone. To date, the petitioner has not provided any credible explanation for her need to have been absent from the area for any length of time, much less a month. Also, the petitioner has offered no credible basis to find that a community service placement at the recycle center at his time is unsuitable for her in terms of either her health or any personal treatment by that employer.

It must be concluded that the petitioner's prolonged absence from the area and ongoing lack of cooperation in securing community service employment constitute an unsuccessful conciliation and noncompliance within the meaning of the above regulations. Under the regulations this is sufficient to support the Department's decision to impose a \$75 a month sanction on her RUFA grant, and the Board is,

therefore, bound to affirm the Department's decision.² 3

V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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² At the hearing, the petitioner also attempted to, in effect, relitigate many of the same issues she had raised, and which the Board decided against her, in Fair Hearing No. 15,426. As the petitioner well knows, under the regulations she can still "cure" any sanction by complying with all applicable service components of Reach Up for a period of two consecutive weeks. (See W.A.M. § 2373.12.)