

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,106
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) imposing a sanction on her Reach Up Financial Assistance (RUFA) grant. The issue is whether the petitioner failed to comply with the requirements of Reach Up. Except where indicated, the following facts are not in dispute.

FINDINGS OF FACT

1. The petitioner is a recipient of RUFA benefits and a mandatory participant in the Reach Up program. The petitioner has a history of noncompliance with the work search component of the program. Prior to February 2004 she had been through at least two separate conciliation processes since June 2003.

2. On February 1, 2004 the Department sanctioned the petitioner for failure to attend a scheduled job search meeting on January 20, 2004. As a result, the petitioner's RUFA grant was reduced \$75 in February. The imposition of this sanction is not in dispute.

3. Following the imposition of this sanction the petitioner began participating in Reach Up activities as directed, including an ongoing job search. As a result, on February 26, 2004, when she showed that she had been doing the job search for two weeks, Reach Up notified PATH that her sanction should be lifted effective with her March 1, 2004 RUFA payment. That same day, Reach Up called the petitioner and scheduled her for another appointment on March 1, 2004.

4. The petitioner failed to attend the March 1 meeting and did not call Reach Up. As a result, on March 5, 2004, Reach Up notified PATH to again impose a sanction. By notice dated March 8, 2004, PATH reduced the petitioner's RUFA grant by \$75 beginning April 1, 2004. The notice also advised the petitioner that she would have to attend a "sanction meeting" with PATH on April 1, 2004 if she wanted to receive any RUFA benefits for April.

5. Following receipt of this sanction notice the petitioner called Reach Up on March 9, 2004 and reported that she was starting a job. Reach Up then sent her an employment verification form with directions to return it by March 21, 2004. The notice advised the petitioner that failure to return the verification might result in the closure of her

RUFA grant. The petitioner did not request an appeal of her sanction (due to begin April 1) at that time.

6. The petitioner neither returned the verification form nor contacted Reach Up or PATH by March 21.

7. On April 1, 2004 the petitioner appeared at her scheduled sanction meeting at PATH. At that time, she stated that she had not started working at the job she had reported on March 9. Instead, the petitioner stated that she was providing day care without pay for a friend, but that she had applied to become a Legally Exempt Day Care (LECC) provider, which would qualify her to be paid through the friend's day care subsidy. PATH told the petitioner it was skeptical of her being able to obtain LECC approval because she has a criminal record. PATH notified her that she would still have to participate in Reach Up activities in order to lift her sanction, and it scheduled her for a meeting on April 19, 2004 to monitor her compliance.

8. The petitioner failed to attend the scheduled meeting on April 19. On April 20, 2004 she called Reach Up and was given another appointment for May 3, 2004. The petitioner attended this meeting and reported that she had not done any job-related activities except for her unpaid day care services.

9. On May 17, 2004 the petitioner called Reach Up to report that she had been denied LECC status. However, the petitioner reported that she was now being paid for providing the day care. Reach Up advised her to verify this employment.

10. On June 1, 2004, having received no verification from the petitioner the Department notified her that effective July 1, 2004 her RUFA sanction would increase to \$175 a month for her continuing noncompliance.

11. On June 3, 2004 the petitioner filed an appeal of the April 1 sanction. A hearing in the matter was held on July 7, 2004. At the hearing the petitioner's attorney maintained that the sanction imposed effective April 1, 2004 was contrary to the Department's regulations. The parties were given until August 6, 2004 to file written arguments.

12. Other than the legal arguments she has made, to date the petitioner has neither alleged nor demonstrated that she has participated in any directed Reach Up job search activity since February 26, 2004. Nor has she provided verification of any work activity or personal circumstance that would exempt her from the work search requirements.

ORDER

The Department's decision is affirmed.

REASONS

Pertinent sections of the Reach Up regulations are reproduced below:

In this case, the petitioner concedes that due to at least two prior instances of noncompliance in 2003 she was not eligible for conciliation as of January 2004.

The petitioner argues that the March 1, 2004 appointment that she missed was merely a "check in" meeting, and should be considered too insignificant to justify the imposition of a sanction when she missed it without notifying Reach Up. She appears to concede, however, that this argument depends heavily on the Department, and the Board, ignoring, disregarding, or certainly minimizing virtually all the events that preceded and followed the date of this meeting. It is concluded that such an analysis is neither required under the above regulations nor justified by the facts and circumstances surrounding the meeting in question.

The above regulation specifies that noncompliance can include the failure "to attend and participate fully in FDP activities". It is clear from the case record in this matter that even though the petitioner had completed two-weeks of a job search in February, she still was not working, and was therefore required to continue with her job search and any other activities as directed by Reach Up. Nothing in the record indicates and, indeed, the petitioner does not allege that she did not understand that she would need to continue

meeting with Reach Up and cooperating in the ongoing process of her work search activities. There is no basis in the record to conclude that the petitioner did not fully understand and appreciate that the March 1 meeting was an essential continuation of this process.

Moreover, given the petitioner's recent history of noncompliance with Reach Up, and the fact that she remained unemployed, there is no basis to conclude that the Department considered the March 1 meeting insignificant or inconsequential. Even if it could be argued that the sanction imposed by the Department immediately after the petitioner missed the March 1 meeting was premature, nothing in the petitioner's subsequent behavior indicates that, in fact, she was *not* failing or refusing to participate in Reach Up activities. As noted above, after February 26, 2004, it can fairly be said that the petitioner did not participate *at all* in Reach Up, even though she knew that if she did so she could purge any sanction and limit its effect to one month. Obviously, because it had already imposed the sanction as of April 1, 2004, *and the petitioner had not appealed*, the Department did not take any further action against her RUFA grant based on her subsequent noncompliance. There is no question, however, that based on any one of the many incidents

of noncompliance set forth above that occurred after March 1, the Department would have been entirely justified under the above regulations in sanctioning the petitioner's RUFA grant.

Regardless of how one characterizes the nature of the March 1 meeting, it cannot be considered in a vacuum. Prior to February 2004 the petitioner had a history of sanctions and noncompliance. The record is clear that after a two-week period of compliance in February she stopped any meaningful participation in Reach Up. Even as of the date of the hearing in this matter on July 7, 2004, despite having been under a continuing sanction for four months, she was *still* not participating. By any reasonable measure of the facts and circumstances, it must be concluded that the Department's decision in this matter was in accord with the above regulations. Therefore, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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