

the petitioner admitted that she has not participated in Reach Up since May 2004.

3. Sometime in May 2004 the petitioner began working "under the table" at a landscaping job. She is paid an hourly wage for this work with no taxes deducted and no benefits. The last Family Development Plan (FDP) the petitioner had with Reach Up (which dates back to October 2003) does not include landscaping work, and does not mention self-employment of any type. The petitioner does not allege that her present work is anything other than seasonal.

4. The sanction on the petitioner's RUFA grant has remained in effect since March 1, 2004. The petitioner appears to maintain that the mere fact she is performing this work should excuse any participation in Reach Up at this time.

ORDER

The Department's decision is affirmed.

REASONS

Fair Hearing Rule No. 1 provides that a petitioner's appeal to the Board must be brought "within 90 days from the date when his or her grievance arose". In this case, the petitioner received notice in February 2004 that her RUFA

grant would be sanctioned effective March 1, 2004. The petitioner's appeal in this matter, filed June 30, 2004, was at least 120 days after these actions were taken. As such, the Board does not have jurisdiction to hear an appeal of the facts and circumstances that led the Department to impose the RUFA sanction beginning March 1. See e.g., Fair Hearing No. 17,624.

However, as noted above, the petitioner also appeals the *continuation* of her sanction beyond May 2004 due to the fact that she is now working. Her appeal in this regard is timely. Unfortunately however, she has not established that the Department's actions in this regard are contrary to the Reach Up regulations.

The petitioner does not dispute the Department's characterization of her landscape work as self-employment. She admits that her employer makes no tax or FICA withholding from her wages, and that she receives no employee benefits of any sort. Section 2364.4 of the Reach Up regulations specifically provides: "A participant may count hours spent working in self-employment toward fulfillment of the work requirement hours, *but only if the participant has an approved self-employment business plan (2364.41) incorporated into the FDP.*" (Emphasis added.)

In this case the petitioner admits that she has not met with her Reach Up counselor since May 2004 to even attempt to devise a new or revised FDP that reflects her landscaping work. Unless and until she does so, it cannot be concluded that she has participated in Reach Up activities within the meaning of the above regulation. If and when the petitioner meets with her Reach Up worker to discuss her FDP, and she cannot come to an agreement regarding her participation in Reach Up at that time, she can request a fair hearing to resolve any areas of disagreement. However, she cannot use her present work, or any other disagreement with Reach Up, as a basis of refusing to meet with her Reach Up case worker. The Department's decision to continue the sanction to her Reach Up grant should be affirmed. 3 V.S.A. § 3091(d), Fair Hearing No. 17.

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