

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,482
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Children and Families, Economic Services, (DCF) sanctioning her Reach Up Financial Assistance (RUFA) grant. The issue is whether the regulations require a minimum sanction period of at least one month.

FINDINGS OF FACT

1. In December 2004 the petitioner was a recipient of RUFA benefits and a mandatory participant in the Reach Up program. However, she had claimed a medical exemption from Reach Up and was not actually participating in Reach Up activities. Following several meetings and discussions with her Reach Up worker the petitioner understood that she was required to provide verification of her medical condition in order to claim such an exemption. The petitioner concedes that she missed the deadlines imposed by her Reach Up worker for providing this verification.

2. On December 21, 2004, the Department notified her that her Reach Up grant would be reduced by \$75 effective January 1, 2005 as a sanction for her failure to verify a medical basis for her nonparticipation in the program.

3. On December 29, 2004, the petitioner provided a fax to her Reach Up worker from her medical provider verifying her claimed medical condition. On the basis of this information the Department determined that the petitioner qualified for a medical exemption from participation in the Reach Up program.

4. However, the Department reduced the petitioner's Reach Up benefits by \$75 for the month of January 2005 as the "minimum" sanction required by the regulations due to the petitioner's previous noncompliance in not furnishing the verification in a timely manner.

5. At a hearing held on this matter on February 8, 2005, the parties agreed that the petitioner had gone off RUFA completely as on February 1, 2005 for income reasons unrelated to the fair hearing. Therefore, inasmuch as the petitioner had received her January RUFA payment without the sanction due to her request for fair hearing, this appeal concerns only the issue of whether the petitioner was "overpaid" RUFA by \$75 for January.

ORDER

The Department's decision is affirmed.

REASONS

The regulations at issue, W.A.M. §§ 2373 *et seq.*, are reproduced below:

The dispute in this matter concerns the phrase "when sanctions are imposed", as it appears in § 2373.11, above. If it is determined that the sanction was "imposed" on December 21, 2004, *the date of the notice*, then the regulations are clear that a one-month minimum sanction, effective January 1, 2005, would have to apply, despite the fact that the petitioner claims to have *effectively* "cured" the sanction on December 29, 2004. If, however, it is determined that the date a sanction is "imposed" refers to *the effective date the sanction is to begin*, then the petitioner could argue that her sanction was still only *proposed* on December 29, 2004, and that as of that date should have been *revoked*, rather than "cured".

Unfortunately for the petitioner, the Department's reading of the regulations is more compelling, at least as a matter of law, if not sympathy. Unless it is determined that a sanction is imposed as of the date of notice, the Department would escape the timeliness provisions inherent in § 2373.11, *supra*, concerning the *contents* of its notices. This section requires the Department to notify a recipient of "the ability to cure the sanctions". However, the provisions regarding the "process" for curing sanctions, § 2373.12, clearly specify that there must be a two-week period of compliance before any

sanction can be considered cured. It would be counter to the wording and intent of the regulations to read § 2373.11 as allowing the Department a period of 10 to 30 days (the minimum and maximum periods following a notice in which any adverse action can be taken) in which to *delay* informing a recipient of the ability to cure their sanction. This could produce the undesirable (and legally untenable) result of extending the length of some sanctions unnecessarily based solely on a recipient's prolonged ignorance of the ability to cure.

It must, therefore, be concluded that under the above regulations the petitioner's sanction was "imposed" on December 21, 2004, when the Department gave her notice of it (and, presumably, of her ability to cure it). It must also be concluded that under the above regulations the petitioner "cured" her sanction on January 12, 2005, two weeks after she remained under an exemption from Reach Up activities that she had verified on December 29, 2004. Finally, it must be concluded that the Department was correct in determining that under these circumstances the petitioner should be sanctioned for the minimum period of one month. Thus, the Department's decision reducing the petitioner's RUFA grant by \$75 for the

month of January 2005 must be affirmed. 3 V.S.A. § 3091(d),
Fair Hearing Rule No. 17.

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