

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 19,802
)
Appeal of)

INTRODUCTION

The petitioner appeals the decisions by the Department for Children and Families, Economic Services reducing her Reach Up Financial Assistance (RUFA) benefits due to separate sanctions for her failure to cooperate with the Office of Child Support (OCS) and with Reach Up. The issues are whether the petitioner received adequate notice of the Department's actions and, if so, whether she had good cause under the regulations for her failure to cooperate. The following findings are based on representations made by the parties at a hearing on July 14, 2005 and on the testimony and documents submitted by the parties at a hearing on August 3, 2005.

FINDINGS OF FACT

1. On March 4, 2005 the Department mailed the petitioner a notice finding her eligible for Reach Up benefits of \$527 effective April 1, 2005. Calculations on the notice indicate that this was the "maximum" amount of Reach Up (rounded to the next lowest dollar).

2. On May 17, 2005 the petitioner's Reach Up worker received notice from OCS that the petitioner had missed two appointments with OCS and should be sanctioned for failing to cooperate in pursuing child support. That same day, the Reach Up worker sent the petitioner a notice reducing her RUFA benefits to \$395 effective June 1, 2005.

3. The only explanation for this action on the notice was a boxed "message" from the Reach Up worker stating: "This is a Child Support sanction--in order to have it lifted you will need to contact (OCS). I cannot lift the sanction without them telling me to do so."

4. On June 1, 2005, the Reach Up worker sent the petitioner a notice increasing her RUFA grant to \$578 a month effective June 1, 2005. The reason stated in the notice was "shelter costs changed from \$0 to \$400. (rule 2245)" (sic). The calculation section on the notice stated that "maximum" Reach Up was \$770.78. At a fair hearing held on July 14, 2005, the Department represented that the petitioner's maximum RUFA grant *on April 1* had been \$770 and that the 25 percent OCS sanction and the loss of the \$50 child support pass through brought the petitioner's RUFA grant down to \$527. The Department could not explain why the petitioner's grant was *further* reduced to \$395. To date, the Department has not

provided either the petitioner or the hearing officer with a comprehensible oral or written explanation of the manner in which it determined the amount of the OCS sanction.

5. During this period of time the petitioner was homeless and was living in motels with her children (in most part paid for by Emergency Assistance [EA]). She was also involved with the Department's Reach Up program. She had instructed the Department to send her mail to her mother's address.

6. On May 23, 2005 the petitioner met with her Reach Up worker to discuss her continuing eligibility for EA. At that meeting the worker scheduled a Reach Up meeting for the petitioner on June 3, 2005. The worker credibly testified (and identified a copy of same) that on May 23 she handed the petitioner a form notice of the June 3 meeting. There is no evidence that the Department ever mailed the petitioner a notice of the June 3 meeting.

7. The petitioner did not appear at the June 3 Reach Up meeting and she did not otherwise contact her worker that day. That same day the Reach Up worker sent the petitioner a certified mailing of a notice of a "conciliation appointment" on June 16, 2005. The notice included the following in bold type: "Please be aware that missing a conciliation appointment

will result in an automatic sanction." The petitioner's mother signed for this notice on June 4, 2005.

8. The petitioner met with her Reach Up worker on June 13, 2005 regarding her ongoing eligibility for EA. The worker credibly testified that she reminded the petitioner of the importance of attending the conciliation meeting on June 16.

9. The petitioner failed to attend the meeting on June 16 and did not call the Department. On June 17, 2005 the Reach Up worker mailed the petitioner a notice that due to her failure to comply with Reach Up her RUFA grant would be reduced by a sanction amount of \$150 effective July 1, 2005.

10. The petitioner testified that she never saw the written notice of the June 16 conciliation meeting, which was a Thursday. The petitioner states that her mother opened the letter and told her by phone that the meeting was on "Friday, June 16". There is no mention of the day of the week on the notice itself.

11. The petitioner further testified that in the morning on Friday, June 17, someone mentioned the date to her and she realized she had missed the appointment the day before. A day care worker who saw the petitioner on June 17 verified that the petitioner appeared upset about this. The petitioner's mother testified that she might have given the petitioner the

wrong date. This much of the petitioner's testimony appears credible.

12. The petitioner further testified that when she realized her mistake on June 17 she immediately called her worker and left a phone message explaining her mistake. The Department has no record of receiving such a message, though such messages are usually logged and stored.

13. The petitioner's Reach Up worker credibly testified that she received no message from or about the petitioner on June 17, and that this was significant because she was concerned that imposing a sanction on the petitioner's RUFA grant would adversely affect the petitioner's eligibility for EA for emergency housing. It was only after she consulted with her supervisor (the supervisor credibly testified as to the worker's concerns and to her instruction that the worker should proceed with the sanction) that the worker sent out a notice, dated that same day, imposing a sanction of \$150 on the petitioner's RUFA grant effective July 1, 2005.

14. The next contact the petitioner had with the Department was the morning of June 22, 2005, presumably after the petitioner had received the notice of sanction, when the petitioner called her Reach Up worker to discuss the sanction. The worker scheduled the petitioner for an appointment later

that same morning. She told the petitioner that they could meet with her supervisor to see if anything could be done regarding the impending sanction. The petitioner did not come to this meeting or call her worker.

15. The petitioner also had a previously scheduled review meeting with her Reach Up worker on June 29, 2005. The petitioner did not attend this meeting and did not call the Department.

16. The petitioner testified she had car problems on June 22, 2005. She did not explain why she did not or could not call the Department.

17. The petitioner's testimony regarding leaving a message for her worker on June 17 and having car problems on June 22 was not credible.

18. The petitioner did not contact her Reach Up worker or appeal the decision imposing the Reach Up sanction until July 6, 2005, when she appeared for a fair hearing regarding her eligibility for GA.

19. While the instant appeal was pending the petitioner appeared for a Reach Up meeting on July 14, but apparently did not comply with instructions that were given her. She was late for a Reach Up meeting on July 25, and it had to be rescheduled.

20. It does not appear that the petitioner missed any of several other meetings at the Department during this time period that involved her receiving EA or payments of her RUFA grant. Virtually nothing in her interactions with the Department during this time indicates a willingness to participate in Reach Up.

ORDER

The Department's decision to sanction the petitioner's RUFA grant due to her alleged non-cooperation with OCS in obtaining child support is reversed due to insufficient notice. The Department's decision imposing the sanction for her failure to cooperate with Reach Up is affirmed.

REASONS

I. Child Support Sanction.

The Department's regulations require that prior to any reduction in RUFA benefits a notice be sent to the recipient that includes the "reasons" for the Department's actions. W.A.M. § 2228.2. In this case, the notice sent to the petitioner on May 18, 2005 states only that her RUFA grant would be reduced from \$527 to \$395 and "this is a child support sanction". There is no mention of how the amount of

the sanction was determined or what actions by the petitioner caused the sanction.

At the fair hearing held on July 14, 2005 the Department represented that OCS had determined that the petitioner had missed two meetings with OCS which were required to pursue child support. However, the Department admitted that *neither it nor* OCS had ever notified the petitioner of this determination. The Department produced copies of notices from OCS to the petitioner only that the meetings had been scheduled, and that OCS had informed *the Department* of its determination that the petitioner had missed them without good cause.

Moreover, the Department could not explain how it had computed the reduction in the petitioner's benefits that had supposedly been triggered by her non-cooperation with OCS. At the hearing the Department represented that an OCS sanction is 25 percent of an individual's RUFA grant, which appears to be the case as set forth in the regulations (see W.A.M. § 2332), although this explanation also did not appear in the May 18 notice. However, as noted above, based on the representations of a supervisor at the July 14 hearing and a computerized payment history, it appeared that the petitioner's RUFA grant had already been reduced 25 percent from the "maximum" on

April 1, and that it was *again* reduced by this amount on June 1, 2005. The hearing officer allowed the Department until August 3, 2005 to provide copies of any further notices it had sent to the petitioner in this regard. The Department was also free to provide a *subsequent* written explanation for its actions. On August 3 the Department admitted it could produce no other such notice. Prior to that date, the Department had not provided any explanation, either orally or in writing, why the petitioner's "maximum" RUFA grant appears to have been reduced *twice* by 25 percent between March 4 and May 18, 2005.¹

Even if it *now* could be concluded that the petitioner has been adequately apprised of the basis of the decision by OCS (i.e., the missed meetings), both she and the hearing officer remain at a loss to determine how the Department computed her sanction. Unless and until the Department provides this information it cannot be concluded that the notice requirements of § 2228.2 have been met. At this point, the only appropriate relief is for the Department, effective June 1, 2005, to restore the petitioner's RUFA grant to the amount

¹ The Department's offer on August 3, 2005 to have a worker orally explain the petitioner's payment history was rejected by the hearing officer as insufficient and untimely. See Fair Hearing Rule No. 5.

it would have been, and would be, if she had not been subject to an OCS sanction on that date.² If and when the Department can provide an adequate notice to the petitioner of the basis for any imposed reduction of her RUFA grant due to an alleged failure to cooperate with OCS in the pursuit of child support it is free to take further action, subject to the petitioner's right to appeal any aspect of that determination.

II. Reach Up Sanction

Unlike the child support sanction, the Department's notices to the petitioner regarding the sanctions resulting from her failure to cooperate with Reach Up appear to have been adequate enough to allow the petitioner and her counsel to prepare for this appeal. As noted above, it is found that the Department adequately informed the petitioner of her scheduled Reach Up meeting on June 3 and her conciliation meeting on June 16, 2005. There is no dispute that the petitioner failed to attend both meetings and that she failed to call the Department before or after missing the June 3 meeting. And, as noted above, her testimony that she called the day after missing the June 16 meeting is not credible.

² See 3 V.S.A. § 3091(d).

Under the Reach Up regulations sanctions are imposed when it is determined that conciliation is "unsuccessful". W.A.M. § 2371.4. Unsuccessful conciliation includes when an individual "fails without good cause to respond to one written notice of a scheduled conciliation conference". Id.

In this case, the petitioner primarily argues that her confusion over the date of the conciliation meeting should be considered "good cause" for having missed that meeting. As noted above, this argument is fatally undercut by the finding that she failed to contact the Department until after she had received the notice of sanction, which was six days after the meeting, and three working days plus a weekend after she claims to have discovered her error. Even then, her worker rescheduled a meeting that same day (June 22) to reconsider her actions, but the petitioner failed to attend *that* meeting, failed to call (despite alleged car problems), and failed to attend *another* scheduled meeting with her worker (again without calling) on June 29. In light of the above findings it cannot be concluded that the petitioner had "good cause" to miss *any* Reach Up meeting within the meaning of the regulations.

The petitioner also argues that despite the above findings the Department cannot impose a sanction due to its

failure to conduct a "good cause inquiry" *prior* to scheduling a conciliation meeting. The petitioner terms this a "pre-conciliation process", although no such term exists in the regulations, and none has been argued before or recognized by the Board in the many Reach up cases considered over the years.

The petitioner bases her argument on W.A.M. § 2370.11, which provides as follows:

De facto refusal occurs when noncompliance is implied by an individual's failure to meet one or more service component requirements without good cause. The case manager shall prepare a written record of the circumstances associated with and the substance of the individual's noncompliance. If the case manager determines that the participant had good cause for noncompliance, the noncompliance process ends. Otherwise, the case manager initiates the conciliation process or, for individuals no longer eligible for conciliation, the sanctions process.

The petitioner also points to W.A.M. § 2370.2, under "Determination of Good Cause", which includes the provision: "The case manager shall make a good-faith effort to contact the individual to discuss the act or pattern of noncompliance with the individual."

The petitioner reads the above provisions as requiring the Department to *unilaterally* initiate a good cause inquiry *before* initiating the conciliation process. However, W.A.M. § 2371, includes the following under "conciliation":

The case manager shall initiate conciliation when the following conditions are met:

1. The case manager has determined that that the individual's de facto refusal to comply with services component requirements was without *apparent* good cause.

. . .

(Emphasis added.)

The only reasonable reading of the above provisions is that the participant has the minimal burden of at least *alleging* good cause. When, as here, a participant fails to attend a scheduled meeting, *and does not call*, the worker is allowed under the above regulations to *presume* that there is no apparent good cause, and thus to begin the conciliation process. This is made even clearer by W.A.M. § 2371.1, a separate regulation that specifically discusses the handling of claims of good cause *during the conciliation process*. Obviously, this provision would be meaningless if all good cause determinations had to be initiated and decided by the Department before the conciliation process could begin.

In this case the petitioner made no claim of good cause until her appeal.³ At her hearing she failed to establish any

³ Given the above findings that the Department hand delivered to the petitioner a written reminder of the June 3 meeting and that it orally reminded her of the June 16 meeting, a claim by the petitioner that the Department did not adequately consider her mail situation is particularly unavailing.

reasonable grounds to find good cause for having failed to attend her Reach Up meetings. Inasmuch as the Department's decision in this case is fully supported by the above findings and in accord with the pertinent regulations it must be affirmed.

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