

conciliation/sanction process. The Group Orientation sessions explain the requirements of the work program to participants.

3. The Orientation sessions are held about twenty miles from the petitioner's home. She does not have her own vehicle or a driver's license and relies on a friend to provide transportation. The friend lives fifteen miles from her.

4. The petitioner was notified in writing that she needed to attend orientation on June 24, 2005 from 8:45 a.m. to 12:30 p.m. She was notified that she needed to arrive "before 8:45 as this orientation will start on time." The notice did not say that if she showed up after 8:45 she would not be allowed in to the orientation.

5. The petitioner arranged for transportation to the orientation site with a friend. However, the friend did not show up and the petitioner did not attend the orientation. The petitioner informed her RU counselor of that fact on June 24. The RU counselor told her that she would be rescheduled for orientation on July 1.

6. The counselor sent a notice to the petitioner to attend the conference on July 1, 2005. The notice contained the same information about the orientation as the previous

notice sent on June 24. On the bottom of the notice the counselor asked the petitioner to provide documentation from the ride provider confirming that she had failed to pick her up and to bring it to another meeting they had scheduled for June 28, 2005.

7. The petitioner came to the June 28 meeting but forgot to get the note. She tried to call her ride provider by telephone from the counselor's office but could not reach her. The counselor told her to bring the note on the day of the rescheduled orientation, July 1, and the petitioner agreed. Although the counselor's notes show that she planned to schedule a conciliation meeting if the petitioner failed to bring the note by July 1, there is no evidence that she told the petitioner that July 1 was her last chance to bring the note before sanction proceedings began.

8. The petitioner got a ride from the same friend to her orientation on July 1. With her she had a note from her friend saying as follows: "I was giving [petitioner's name] a ride to welfare. My car didn't start so it's my fault she didn't make it to her appt." The note was signed by the friend and included her phone number. The petitioner acknowledged that she knew the counselor wanted the note but

thought the most important thing for her to do was to go to the orientation meeting.

9. On July 1, the petitioner's friend was late to pick her up and the petitioner did not arrive at the orientation until about 9:00 a.m. When the petitioner attempted to enter the orientation room, a worker stationed at the door told her that no one was admitted to the room after 8:45 a.m and she needed to schedule another orientation. The petitioner said she did not think she could get a ride back but the monitor did not continue the conversation because it would disrupt the meeting. The counselor estimated that the petitioner had already missed almost a quarter of the information when she came to the door. She does not recall if the petitioner had a note in her hand but said she would have taken it if it had been offered to her.

10. After being turned away at the door, the petitioner went to her counselor's office to give her the note but the office was closed due to and until the end of the orientation session. Since that time was several hours away, the petitioner returned home with her friend.

11. After the orientation meeting was over, the petitioner's counselor discussed the petitioner's failure to attend the meeting with her superior. The superior told her

that as the petitioner had two prior conciliation meetings in a year and had failed to provide any verification of her transportation failure on that day as they had agreed, that it was appropriate to proceed directly to a sanction with no further conciliation meeting.

12. The counselor filled out a sanction authorization form that day and sent it to her benefits specialist. The form recited the events of June 24 and June 28 set forth above and added that the petitioner had failed to meet her July 1 deadline for providing the excuse note. The form noted that she did not show or call on July 1. No new orientation appointment was set up for the petitioner.

13. The petitioner met with the counselor four days later on July 5 to discuss her work search. She did not think to bring the note that day but the counselor told her it was too late to get it. At that time the counselor told the petitioner that she had already sent a sanction authorization to DCF four days before for failing to provide the verification by July 1. The petitioner became angry and told the counselor that she did come down on July 1 and had brought the note but was not allowed to enter the meeting. The counselor was able to confirm with the worker guarding the door that the petitioner had come down on July 1.

However, the counselor determined to continue with the sanction because the petitioner had not delivered the note to her that day or called herself to say what happened. The petitioner asked to speak to a supervisor and was given some names. She asked to get a different Reach Up counselor and was told that she could ask for a fair hearing.

14. The sanction authorization form generated a notice of decision to the petitioner dated July 13, 2005 telling her that her benefits would be sanctioned by \$150 beginning August 1, 2005 for her "failure to comply with Reach Up requirements without good cause." She was told to meet with her counselor again on August 1, 2005 for a sanction meeting needed to obtain her benefits for that month. She was told that she could remove the sanction by fully cooperating for two weeks. However, no new orientation date was set for the petitioner so that she could remove the sanction.

ORDER

The decision of DCF is reversed.

REASONS

Under rules adopted by DCF in its "Reach Up" program, adults must participate in a family development plan (FDP) which, unless there is some medical exemption, usually begins

with referral to the department of employment and training (DET) for work activities. W.A.M. § 2362.1. The regulations require participants to cooperate by attending and participating fully in FDP activities or face a sanction process which can result in a reduction of the monthly grant from \$75 to \$225 per month depending on the number of months the participant has already been sanctioned. W.A.M. §§ 2372 and 2372.2.

Failure to cooperate with an activity can be excused if DCF determines that there is "good cause". W.A.M. § 2370. "Good cause" is defined as "circumstances beyond the control of the participant" including when "a participant, after making a good-faith effort, was unable to arrange transportation to or from the place of employment or FDP activity . . . and the participant informed the employer or appropriate person as soon as possible." W.A.M. § 2370.32. Good cause is determined under the regulations as follows:

Determination of Good Cause

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 individual will provide sufficient documentation to substantiate a claim of good cause. On the basis of this discussion and documentation, if any, the case manager will determine whether there was a good cause basis for the individual's noncompliance. If the individual does not respond to or fully cooperate with the case manager's

attempt to establish good cause, the case manager will determine that there was no good cause basis for the noncompliance. The case manager shall complete the good cause determination within 10 days of becoming aware of the individual's noncompliance.

W.A.M. § 2370.2.

The petitioner does not dispute that attending an orientation session at DET is a required FDP activity for her. Neither does she dispute that she failed to attend the first session which was scheduled for her. She claims, however, that she should be found to have good cause because the transportation she arranged failed her. She reported this fact to her worker two days later at their next meeting. The worker required her to provide "documentation" of that fact from the person with whom she had arranged the failed ride.

The Board has long held that refusal to cooperate with verification requests can only be presumed and penalized if the participant "is notified specifically to provide information necessary for eligibility by a certain date and advised of the consequences . . . of failure to take the action." Fair Hearings No. 6,898 and 10,217. In this case, the petitioner received a new orientation notice with a notation handwritten on the bottom saying that she should provide the documentation on June 28 when she was next

scheduled for an appointment. The note did not tell her what the consequences would be for failing to provide such a note and for failing to turn the note in on that day. The petitioner forgot the note and was given an oral extension to provide the note on July 1, 2005. The evidence shows that the petitioner did attempt to provide the documentation requested on July 1, 2005, but was prevented from doing so when she was turned away from the orientation meeting. That same day, the worker, who was unaware of the attempt, began the sanction process. The petitioner only learned that a deadline had passed, that the documentation was critical to keeping her benefits and that her attempt to attend the orientation on July 1 had not cured her non-attendance after the sanction process had already begun. Because the petitioner had been involved in two conciliation processes during the past eighteen months, she had no other opportunity to discuss her failure before the sanction was imposed.

W.A.M. § 2371.

It must be concluded that this is less than the process that should have been due to the petitioner in this matter under the prior rulings of the Board and under the "good-faith" requirement in the above regulation. Fairness dictates that the petitioner be told the consequence of

failing to take the action of providing the note before the action must be taken, not afterward. In addition, the role DCF played in preventing her meeting the deadline¹ as well as the petitioner's attempt to attend the second orientation meeting should also have been taken into account "in good faith" when the DET counselor learned of these facts. These facts were clearly pertinent to determining whether the petitioner's noncooperation with attending orientation was purposeful or inadvertent. DCF's failure to reverse the sanction and to reconsider the noncompliance finding in light of these facts was arbitrary and unreasonable. DCF further acted arbitrarily by telling the petitioner that she had two weeks to "cure" this sanction or face another when it failed to schedule her for a new orientation meeting needed to effectuate the cure. It was not until several weeks later when this failure was pointed out at the fair hearing that DCF set up a new orientation meeting which was attended by the petitioner. Acknowledging this failure, DCF asks for only a one month sanction. It must be found, however, that as DCF has failed in this matter to follow its own regulation requiring a "good faith" determination of the issues and to

¹ This was another instance of DCF's failure to notify the participant of the consequences of late arrival to the meeting, namely, that she would be excluded and again be determined to be out of compliance.

follow the basic dictates of due process, its decision to place any sanction on the petitioner's RUFA grant is reversed.

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