STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 20,235
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families to sanction her Reach Up Financial Assistance (RUFA) grant. The issues are (1) whether the petitioner failed to comply with the Reach Up program requirements without good cause and (2) if petitioner failed to comply without good cause, the date by which the petitioner cured her sanction.

A fair hearing was held on May 30, 2007. The Department supplemented the documentary evidence on June 28, 2007. The findings of fact are based upon the documentary evidence and the testimony adduced at hearing.

FINDINGS OF FACT

1. The petitioner lives with her three minor children and one adult child. Her minor children include a seventeen-year-old daughter, a fourteen-year-old daughter, and a twelve-year-old son. Petitioner receives a three person RUFA grant. Petitioner's son is disabled and receives

Supplemental Security Income (SSI) disability benefits due to ADHD, learning impairments, and psychological problems.

2. At all times relevant to this decision, the Department's Family Services Division (FSD) has provided services to petitioner's family through a protective supervision case. The impacts of the protective supervision case upon petitioner's ability to meet RUFA requirements will be addressed below.

3. On or about November 9, 2004, petitioner was assigned to the Division of Vocational Rehabilitation (VR) for Reach Up case management. The Department contracts with VR for case management services when the Reach Up recipient has a disability. C. C-B. was assigned as petitioner's VR case manager and continued in that role until March 2006 when the Department resumed case management for petitioner. C. C-B. is a certified rehabilitation counselor. C. C-B. keeps contemporaneous counselor case notes on her cases. On the case notes for petitioner, C. C-B. noted that petitioner's primary disability is psychosocial impairment with a secondary disability of cognitive impairment. C. C-B. testified at the hearing. C. C-B. recognized at the outset of her work with petitioner that petitioner has underlying emotional/mental health issues.

4. The parties entered into their first Individualized Plan for Employment (IPE) on December 8, 2004. The IPE serves the same function as the Family Development Plan (FDP); a FDP is required in Reach-Up cases. The parties entered into subsequent IPEs on June 9, 2005 and November 7, 2005 that mirror the December 8, 2004 IPE. Each IPE lists the following barriers to employment; mental health, physical health, transportation, and learning disability. The IPEs do not list a specific employment outcome. The IPEs set out the services VR will provide and set out the petitioner's responsibilities. The petitioner's responsibilities include attending scheduled appointments and following through with tasks and activities assigned by VR and the Department. The IPE informs petitioner that if she does not follow through or misses two consecutive VR appointments, her case may be returned to the Department.

5. On February 10, 2006, C. C-B. sent a sanction authorization to the Department. C. C-B. cited four reasons for the sanction authorization including:

a) Failure to attend monthly group meetings,

b) Failure to provide a mental health evaluation,

c) Failure to pursue the requirements for a GED, and

d) Failure to produce 6 doctor notes for absences during the prior 13 months.[1]

Based on the sanction authorization, the Department issued a notice on February 14, 2006 to sanction petitioner starting March 1, 2006 based on noncompliance with Reach Up requirements without good cause.[2] Petitioner filed a timely appeal to the sanction decision.

6. C. C-B. required petitioner to attend monthly group meetings as part of her RUFA requirements. Monthly meetings included a life skills training group. According to C. C-B., petitioner missed meetings scheduled for November 9, 2005, December 14, 2005 (VSAC meeting), and January 11, 2006 without calling in to explain that she was unable to attend. C. C-B. in her contemporaneous case notes indicates that petitioner had hand surgery on December 1, 2005 with follow-up scheduled for December 13, 2005 to put on a new cast for two weeks, and that petitioner told C. C-B. that she had not received the notice for the January 11, 2006 meeting.

7. C. C-B. required petitioner to bring in a mental health evaluation, intake or treatment plan. C. C-B. had originally requested petitioner to seek treatment from

[1] Subsequent documentation showed there were five absences.
[2] Petitioner was informed of the dates of missed meetings and dates for doctor's notes by letter from the Department's counsel dated October 14, 2006.

Northwestern Counseling and Support Services (NCSS), the local mental health agency. Petitioner did not seek treatment from NCSS. Petitioner testified that she was afraid to seek individual help from NCSS because she believed that one of the staff would not keep her information confidential. Petitioner set up therapy with A. B. instead.

C. C-B. was aware that petitioner was receiving therapy from A. B. At all times relative to this case, petitioner has received ongoing psychological counseling.

C. C-B. had petitioner sign an authorization to release information from A. B. to VR on November 7, 2005. C. C-B. testified that she needed substantiation of a mental health diagnosis because petitioner had been found eligible for services based on mental health concerns. C. C-B. did not directly contact A. B. to obtain this information but directed petitioner to do so. As will be more fully spelled out below regarding petitioner's efforts to meet Department requests to cure the sanction, petitioner later obtained documentation from A. B.

8. C. C-B. referred petitioner to VAL (Vermont Adult Learning) on September 6, 2005 to complete her GED. Petitioner has a tenth grade education and learning impairments. Petitioner's lack of a GED is a barrier to

employment. C. C-B. wrote in her case notes on November 14, 2005 that K.W. from VAL sent her the results of petitioner's TABE survey showing that petitioner will need several years to make up her education. Her notes indicated that petitioner was not attending GED classes on a regular basis. Petitioner testified at hearing that she was not able to attend to her GED on a regular basis due to family crises with her son and due to the requirements she needed to fulfill with the Department of Corrections.

9. According to Department records, the petitioner failed to produce doctor's notes to excuse absences for meetings on September 6, 2005; September 13, 2005; November 9, 2005; December 14, 2005; and January 11, 2006. As noted in Finding No. 6, the petitioner had hand surgery on December 1, 2005, and did not receive notice for January 11, 2006. At a status conference on September 29, 2006, petitioner said she would provide medical notes. Petitioner was notified of the dates for medical notes in the Department's October 14, 2006 letter to her. Petitioner has not produced any notes for the other dates.

10. In the original sanction authorization to the Department, C. C-B. listed seven actions for petitioner to cure her sanction including:

a) Obtain a psychiatric evaluation from NCSS, agree to treatment as recommended, and agree to share the information with VR,

b) Obtain verification from VAL that she is working on her GED,

c) Attend recommended VR groups,

d) Complete a vocational assessment with VR,

e) Complete work crew and other Department of Corrections requirements,

f) Sign releases to allow sharing of information between the Department, VR, and Corrections, and

g) Buy a planner for appointments.

It should be noted that upon sanctioning petitioner, petitioner's case was returned to the Department for case management and petitioner was no longer an active VR client. The February 14, 2006 notice sanctioning petitioner did not include the steps petitioner needed to take to cure the sanction.

Based on request at the status conference of September 29, 2006, the Department informed petitioner in a letter dated October 14, 2006 of the steps they believe she needed to take to cure the sanction. This letter incorporated the original points in C. C-B.'s sanction request except to amend the first request to include documentation from A.B. There is no other written documentation to the petitioner of the

steps she needed to cure the sanction except for the October 14, 2006 letter. Petitioner's present case manager, C. J., testified that she orally told petitioner how to cure the sanction when petitioner's case reverted to the Department in March 2006.

11. T. C., social worker with the Family Services Division, testified on petitioner's behalf.[3] T. C. has been working with the petitioner's family for two years due to a protective supervision case. Originally, T. C. worked with the petitioner and her older daughter. Their work included many school meetings. C. C-B. was aware of this case and attended a couple of school meetings regarding the daughter. Petitioner reached out to T.C. during May 2006 because of the escalating problems with her son.

T.C. described petitioner as having trust issues and as someone who has to feel comfortable in a relationship before complying with requests. According to T. C., petitioner has been good about keeping in touch, calling, and letting T.C. know when she is unable to make appointments. T.C. initially referred petitioner to NCSS two years ago, but petitioner's

[3] T.C. had first contacted the Board on petitioner's behalf during August 2006 to explain that petitioner had been unable to attend previously scheduled fair hearing due to a family emergency with her son. As a result, the case was rescheduled for September 29, 2006 at which time the issues were explained to petitioner and the case was scheduled for development and hearing.

trust issues kept her from using NCSS then. Instead, petitioner obtained counseling from A. B.

T. C. described the son as oppositional with an explosive temper. The son has been abusive to the petitioner in the past. The son is on an IEP (individualized education plan for special education students) and has attended Project SOAR, an alternative school for children with emotional and behavioral problems. T.C. testified that when the son's problems take over, the petitioner will be tied up for the day. For example, if the son will not get on the school bus, the petitioner needs to monitor him for the day. The son cannot be left alone. T.C. described petitioner as being very patient with her son but overwhelmed by too many things happening in one day.

According to T.C., the son became worse during the spring and summer of 2006. The son was sent to Northeastern Family Institute (NFI) for a couple weeks due to out of control behavior. There were problems with the availability of community resources. T. C. referred the family to NCSS. As a result of this referral, the family receives intensive family based services from J. Y. of NCSS.

T. C. testified that petitioner is receiving counseling from J. L. at NCSS. She noted that there are not sufficient

services in the county and that it can take time to access those services. She noted that petitioner had completed her probation requirements.

12. For the December 1, 2006 status conference, petitioner provided the Department with a letter from A. B. dated October 25, 2006. A. B. noted that petitioner was meeting with her weekly for counseling. A. B. stated that petitioner has a problem with impulsivity and has many matters to deal with leaving her with little time for herself. A. B. concluded with:

> [petitioner] has a son with special needs, which is a full-time job due to his high level of care and follow through. She centers her life with providing for her children and has been an active participant with resources to best help her family.

In addition, petitioner provided a letter dated November 28, 2006 from her probation officer regarding the time needed to complete her work crew requirements. Petitioner was scheduled to work on Sundays and Thursdays through the spring of 2007. During the conference, petitioner explained that she had purchased a planner, signed releases with the Department, completed half of her GED assessment, and was taking part in intensive family-based services with NCSS.

13. The Department indicated in January 2007 that A. B.'s letter was not sufficient because they wanted a

diagnosis. Petitioner referred herself to NCSS at the end of 2006. Petitioner found that she needed to wait for an initial appointment and then see a counselor several times before being referred to a psychiatrist. Petitioner has followed through and has received counseling through NCSS. As of the hearing, the petitioner had met several times with a therapist for counseling and was awaiting her appointment with a psychiatrist. The Department has not contacted A. B. or any other mental health providers directly to ask for a diagnosis. The Department has access to petitioner's diagnosis since she is a Medicaid recipient and the Department would have records of NCSS dates of treatment including treatment codes.

14. Petitioner testified at the hearing. According to petitioner, she has had a hard time following through on different requirements because of her son's needs. She further testified that she held up on working on her GED until finishing her probation requirements. According to petitioner, she completed her probation requirements. Petitioner did not appear to understand why the note she obtained from A. B. did not meet the Department's request.

ORDER

The Department's decision is affirmed in part and reversed in part.

REASONS

The Reach Up program is predicated, in part, on helping families become self-sufficient. However, the focus on self-sufficiency does not exist in a vacuum. The Legislature set out the following purposes in 33 V.S.A. § 1102(a):

> (1) to assist families, recognizing individual and unique characteristics, to obtain the opportunities and skills necessary for self-sufficiency.
>
> . . .
>
> (3) to support parental nurturing.
>
> (4) to support parental responsibility and positive parental role models, both custodial and noncustodial.
>
> 5) to measure the success of the system by what is best for children.
>
> . . .

See W.A.M. § 2200. To ensure that the goals of the Reach Up program are met, Vermont uses a case management system designed to assess an applicant's abilities, identify barriers impeding an applicant's ability to become self-sufficient, and provide help in the implementation of a family development plan (FDP) or, in the case of applicants referred to Vocational Rehabilitation, the implementation of

an Individualized Plan for Employment (IPE). 33 V.S.A. § 1106, W.A.M. §§ 2340 (participation linked to the applicant's needs and abilities) and 2350.

Identifying barriers is particularly important. Barrier is defined in 33 V.S.A. § 1101(5) as follows:

> "Barrier" means any physical, emotional, or mental condition, any lack of an educational, vocational, or other skill or ability, and any lack of transportation, child care, housing, medical assistance or other services or resources, domestic violence circumstances, caretaker responsibilities, or other conditions or circumstances that prevent an individual from engaging in employment or other work activity.

W.A.M. § 2341(5). Caretaker responsibilities refer to parental responsibilities. 33 V.S.A. § 1101(6), W.A.M. § 2341(6).

The process of developing an IPE and enabling an applicant to become self-sufficient is based on a cooperative model involving both the applicant and the case manager. The goal is to set the applicant towards success not create requirements that set the applicant up for failure.

In this case, C. C-B. met with petitioner and identified several of the barriers impacting petitioner. C. C-B. found that petitioner presented with underlying emotional issues and identified her mental health as an issue. In addition, C. C-B. identified learning disabilities, lack of education,

physical health, and transportation as barriers to employment. Unfortunately, the totality of petitioner's barriers was not identified including her caretaker responsibilities towards a troubled child and her probation requirements.

Although we can assume that a full identification of petitioner's barriers and petitioner's abilities to deal with the multiple obligations for her child, requirements of the Family Services case, and probation requirements would have led to a different IPE, our decision needs to be based upon the actual IPE and requirements in petitioner's case.

In terms of the sanctions, the issues include whether there is an underlying basis to request a sanction, and, if so, whether the petitioner had good cause. The Department can seek a sanction if the petitioner has failed to comply with the requirements of her IPE. Sanctions are an appropriate response if the petitioner does not have good cause. W.A.M. § 2370.1.

The Legislature has directed that recipients comply with their FDPs or IPEs unless they have good cause. They directed the commissioner to define good cause through rule-making. 33 V.S.A. § 1112(a). The regulations defining good cause are found at W.A.M. § 2370.32 and include, in part:

5. A family emergency requiring the participant's immediate attention, such as the death, illness, or injury of a family member, or the participant's own illness prevented the participant from complying with a requirement, and the participant notified the employer or appropriate person of the situation at the earliest possible moment.

12. The participant was called away from the job or FDP activity to attend to a school emergency involving the participant's child…and the participant informed the employer or appropriate person of this situation before leaving the work or FDP activity site or, when this was not possible, as soon as possible thereafter.

Although the Department set out four reasons for sanctions, the record does not support the original basis for the sanctions. (1) Failure to attend monthly meetings. Although the Department lists three meetings the record indicates that the petitioner did not receive notice to one meeting and that another meeting occurred during a time VR was aware of petitioner's hand surgery and treatment. Only one meeting, November 9, 2005, is left unaccounted for. (2) Failure to provide a mental health evaluation. Petitioner's IPE required her to pursue counseling. Petitioner was requested by C. C-B. to bring in a treatment plan or evaluation. Petitioner consistently followed through on counseling. The Department was aware that, at the time in question, petitioner was receiving counseling from A.B. Petitioner signed a release allowing C. C-B. to obtain

information from A.B. Under the Reach Up case management system, the case manager is to help the petitioner implement the requirements of the program and should have done so by directly sending the release to A.B. with her specific questions. Based on the testimony, petitioner had difficulty understanding what was requested from her therapist. Petitioner's major responsibility to surmount her emotional/mental health barrier was to engage in counseling; she did so and continues to do so. The alleged violation of not bringing in an evaluation should be considered *de minimus* or not a basis for a sanction. (3) Failure to pursue requirements for a GED. At the time of the sanction authorization, the record indicated petitioner sporadically pursued her GED. (4) Failure to produce 6 doctor notes. The record actually shows five dates. Of these dates, the record indicated lack of notice for January 11, 2006, and that C. C-B. was aware of petitioner's medical issues during December 2005. The remaining dates are September 6, 2005; September 13, 2005; and November 9, 2005.

Looking at the remaining bases for a sanction, the question is whether petitioner had good cause. The good cause criteria recognize that family emergencies can prevent a participant from complying with IPE requirements.

Petitioner faced and continues to face challenges dealing with her children, in particular, with her disabled son. A.B. indicated that petitioner has the equivalent of a full-time job dealing with her son. However, the regulations put the burden on the petitioner to inform the appropriate person when a family emergency prevented her from participation in IPE activities. Petitioner did not do so. Petitioner was given the opportunity through the fair hearing process to provide documentation including doctor notes and did not do so. As a result, the Department is justified in imposing a sanction.

The remaining issue is whether the petitioner has cured the sanction. The regulations governing curing sanctions are meant to get participants back on track. As a result, they focus on having the participant comply with requirements for a two week period.[4] W.A.M. §§ 2373.11 and 2373.12. The pertinent provisions state:

> 2373.11 Notice of Ability to Cure
>
> When sanctions are imposed, the department shall immediately provide written notice to affected adults of their ability to cure sanctions by participating fully and satisfactorily for two weeks in required activities. When a sanctioned individual meets with the case

[4] Examples of compliance are participating in job search for two weeks, participating in a community service placement for two weeks, etc.

> manager, the department shall remind the participant of the option to cure sanctions.
>
> 2373.12 Process to Cure Sanctions
>
> To demonstrate compliance sufficient to cure sanctions, the sanctioned adult must comply fully with the FDP activity or employment for a period of two consecutive weeks. The activities the participant must engage in are those that are required of the participant at the time of the sanction, including FDP activities, employment, or increased hours of employment, whichever is applicable.
>
> The department shall restore benefits effective the month the participant completes the two-week period of compliance. . .

The Department's approach to curing sanctions in this particular case is problematic for a number of reasons.

First, the regulations mandate written notice to the participant explaining their right to cure the sanction. To be meaningful, the notice needs to tell the participant what actions need to be taken in order to cure the sanction. This was not done in this case. In fact, petitioner did not have written notice of the actions the Department wanted her to complete until the October 14, 2006 letter from the Department's counsel.

Second, the regulations are set up to allow participants to cure their sanctions within two weeks. Here, even assuming the Department requirements are appropriate, the requirements are such that petitioner could not meet the

requirements in a two week period unlike other sanctioned participants. For example, requiring petitioner to complete work crew rather than requiring her ongoing compliance with the Department of Corrections over a two week period.

Third, a number of the Department's conditions for petitioner to cure her sanction are not appropriate. For example, petitioner was no longer under the purview of VR so that requirements to participate in VR activities have no basis. As stated earlier, petitioner had signed an appropriate release for VR to obtain information from her counselor and should have been helped by her case manager in obtaining any records.

Petitioner was not given a meaningful opportunity to cure her sanction. The months between March 2006 and October 2006 should not be considered for sanctions due to the inadequate notice.[5]

Petitioner was informed during the September 29, 2006 status conference of actions that she allegedly needed to take to cure the sanction. These actions were reduced to writing on October 14, 2006.

[5] In addition, the Reach Up program allows deferment of its requirements in certain situations, e.g. a parent is needed to care for a disabled child. 33 V.S.A. § 1114(b)(6). Petitioner's emergency situation with her son over the spring and summer should be considered as grounds for a deferment of any requirements under the Reach Up program, including the cure provisions.

By the December 1, 2006 status conference, the petitioner indicated she signed the releases required by the Department, she was participating in her work crew, she purchased a planner to keep track of all her appointments, she was receiving both individual counseling and involved in intensive family therapy, she supplied documentation from A. B. (her counselor) and from her probation officer, and she did part of an assessment with VAL. These actions are sufficient for petitioner to cure her sanction. Based on these actions and the above analysis, petitioner should be sanctioned only for the months of October and November 2006.

It is important to note that petitioner is involved with the Department's Economic Services Division and Family Services Division as well as the mental health system and the schools. Petitioner faces continuing challenges ensuring that her son's needs are met. The Reach Up program is set up to ensure that the needs of children are met. In addition, the Agency of Human Services was reorganized so that petitioner and other applicants receive coordinated services from the departments comprising the agency. The reorganization is premised on an understanding that applicants cannot be properly supported nor the departments fulfill their roles if services and communication are

fragmented. It is hoped that future case management for petitioner will meet the goals of the reorganization and include consultation between all these entities to take into account the children's needs when prioritizing petitioner's program requirements.

Accordingly, the Department's decision to sanction petitioner is affirmed for the reasons set out above. In addition, the sanction should be for the months of October and November 2006. The petitioner's actions should be deemed to cure the sanction.

# # #