STATE OF VERMONT

HUMAN SERVICES BOARD

In re	) Fair Hearing No. B-03/09-171
	)
Appeal of	)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, imposing a sanction on her Reach Up Financial Assistance (RUFA) grant. The issues include whether the Department correctly proceeded to sanction petitioner under the pertinent regulations and whether petitioner failed to comply with RUFA requirements without good cause.

A fair hearing was held on May 7, 2009. The record was held open for written argument. The decision is based upon testimony, the documentary record, and legal briefing.

FINDINGS OF FACT

1. The petitioner resides with her husband and their three minor children who are nine, six, and four years of age. The petitioner and her husband met when they were teenagers. They were both in foster care and under the custody of the Department. Petitioner became pregnant when she was fifteen years old and dropped out of high school.

She does not have a G.E.D. The petitioner remembers that school was difficult for her.

2. The petitioner and her husband followed traditional role models until recently. Petitioner's husband provided the support. He is now unable to work due to medical issues. He was diagnosed with lupus during 2008. The Department considers petitioner's husband disabled due to medical issues and educational delays; he has been referred to the Social Security Administration to apply for disability benefits. They have experienced stress in their relationship and the Department has been aware of marital tension between the petitioner and her husband since October 2008.

3. The petitioner's oldest child receives special help at school for math and reading. Petitioner described her middle child as very angry and acting out. Because of the family stressors (that will be spelled out below), the petitioner's family started Intensive Family Based Services with the Department's Family Services Division this past April.

4. Petitioner's RUFA case manager is D.L. Petitioner is the designated primary worker in the household meaning that petitioner is responsible for working with the Department to become employable and employed. Petitioner's

husband is responsible for caring for their youngest child while petitioner attends her RUFA activities.

5. The petitioner and D.L. entered into a Family Development Plan (FDP) on September 22, 2008. The Department modified petitioner's FDP to twenty hours per week until October 31, 2008 rather than thirty hours per week in recognition that petitioner was overwhelmed by the changes in her family caused by her husband's illness and her need to take on the wage-earner role. Petitioner's primary responsibility in her FDP was to complete Making It Work; petitioner did so.

6. In crafting the September 22, 2008 FDP, D.L. identified transportation as a barrier. Transportation was and continues to be a barrier because the petitioner does not have a driver's license, does not live on a bus line or near public transportation, and her family has one vehicle that her husband uses for his medical appointments and the children.

7. At the time petitioner signed the September 22, 2008 FDP, she also acknowledged receipt of Handout, Important Information about Verifying Participation in Reach Up

Activities.[1] This handout spelled out the department's policies regarding the number of allowable absences, the need to call both the job-site supervisor and the department case manager prior to an absence, and the list of good cause criteria for absences.

8. Petitioner started a Community Service Placement (CSP) at a local senior center on or about October 27, 2008 for thirty hours per week with a target end date of April 29, 2009.

9. On or about February 4, 2009 (a Wednesday), D.L. received a telephone call from petitioner's supervisor at the senior center. D.L.'s case notes indicate that she was told that petitioner called the senior center on Monday saying she was unable to come in, that petitioner left early on Tuesday to cash a check for a car, and called in absent on Wednesday because her children were sick. The notes indicate that the supervisor said it was unusual for petitioner to miss three days in a row, that she was concerned because petitioner was usually reliable, the seniors liked her and she did good work.

[1] The Handout includes requirements that are in addition to the requirements found in the Welfare Assistance Manual (W.A.M.). For example, the regulations require the recipient to contact the employer or an appropriate person in the case of an absence not both the employer and the department case manager.

10. D.L. was concerned because petitioner had not telephoned D.L. to say she would be absent from her placement. D.L. telephoned petitioner on February 4, 2009. D.L.'s notes indicate that petitioner sounded tired but had no reason not to call D.L. "just been busy, kids been sick, car died yesterday, so they cashed taxes check and bought a van". D.L. told petitioner that her case would go to conciliation and sent petitioner a Conciliation Letter that same day stating that even though petitioner called her work placement, petitioner needed to call her case manager to have excused absences for those days.

11. D.L. and petitioner met on February 10, 2009 for the Conciliation Meeting. In her case notes, D.L. wrote that the petitioner was overwhelmed and tired, worried about her family, that her daughter was sick and missed school and may not pass. D.L. noted petitioner had problems with her husband and feeling like a single parent. D.L. wrote that petitioner signed the conciliation agreement but felt she could not keep up.

During this meeting, the petitioner received a telephone call from her local police department that they wanted to see her on February 18, 2009 because her daughter had missed so many days of school. D.L. wrote that the telephone call sent

petitioner over the edge and that she ran crying from the room. Petitioner returned after she composed herself. D.L. offered to go with petitioner to the police department and to the school but her offer was not accepted.

D.L. later learned from petitioner's husband that the school was concerned about neglect because of the ongoing problems one child had with head lice. He told D.L. that they did not have the money to do all the laundry they needed to do.

12. On February 10, 2009, the petitioner signed the Conciliation Resolution agreeing to call both the worksite supervisor and her department case manager (D.L.) if she was going to be absent. The agreement was to start within five days and last six weeks.

13. At hearing, D.L. explained that it was not enough for petitioner to notify the Senior Center about absences but that petitioner had to notify D.L. also.

14. At hearing, petitioner testified that their car had broken down the beginning of February 2009 so she had problems getting to the senior center. That Tuesday, she left the senior center early to cash their tax refund check and the money was used to purchase another vehicle. On Wednesday (February 4), her children were sick and she was

unable to attend her placement. Petitioner testified that she kept the senior center informed each day but she did not contact D.L. because she was not thinking about it and she thought contacting the senior center was sufficient.

15. D.L. had petitioner sign a new FDP on February 10, 2009. D.L. put the new FDP on hold because of the pressures petitioner was under. D.L. met with her supervisor, L.S., that same day. D.L. testified that a purpose of her meeting with L.S. was to see if petitioner was eligible for reduced hours as a modification of her FDP. After meeting with L.S., the plan was to switch petitioner from a CSP to a work experience placement where there would be more support after petitioner's CSP ended at the senior center. Petitioner's hours were not reduced.

16. An incident occurred at the senior center on February 17, 2009 that led to the loss of petitioner's placement and to the Department issuing a second conciliation.

17. On February 17, 2009, the petitioner and D.L. had a telephone conversation in which petitioner told D.L. that she was tired and not feeling well that day and that she and her supervisor had a disagreement. Petitioner said that her supervisor told her to take a break; petitioner understood

her supervisor's words to mean she should leave for the remainder of the day. Petitioner told D.L. she would be unable to work on February 18, 2009 because of her appointment at the local police department and because her husband had two medical appointments. D.L. informed petitioner to notify the senior center that she would be absent. Petitioner did timely notify the senior center of her absence.

18. D.L.'s case notes indicate that she had a telephone conversation with petitioner's supervisor on February 18, 2009. The case notes indicate that the supervisor described petitioner as draggy, moody, and not her normal self on February 17, 2009. There was a disagreement about petitioner's work that day. The notes indicate that the supervisor told petitioner to take a break which the supervisor meant to be a few minutes. The supervisor told D.L. they did not want petitioner to return to the senior center because petitioner's attitude had changed in the past week.

19. On February 23, 2009, the petitioner was handed a Conciliation Letter that stated petitioner "had blew out of placement that ended site's willingness to continue."

20. A Conciliation Meeting occurred on February 23, 2009. In her testimony, D.L. noted that petitioner was under a number of stressors during February 2009 based on petitioner's husband's recent diagnosis of lupus, marital conflict, sick children, and children's missed school attendance. D.L. was aware of the family's background including petitioner's depression and history as a foster child. D.L.'s case notes indicate that petitioner cried because of everything happening at home. D.L. noted that petitioner seemed apathetic and just wanted to sign paperwork and leave. The Conciliation Resolution is undated but calls for the petitioner to comply with FDPs and "continue to call ahead if unable to attend".

21. The petitioner was placed at a local non-profit agency (RN) starting February 27, 2009. A new FDP was signed.

22. On Friday, March 13, 2009, petitioner's husband had emergency surgery for appendicitis. Petitioner called D.L. from the hospital to explain she was unable to attend her placement and asked D.L. to call RN because petitioner did not have the telephone number. D.L. called RN on petitioner's behalf that day.

23. On Monday, March 16, 2009, petitioner called both D.L. and her work-site supervisor to let them know she would not be there. Petitioner informed D.L. that her husband was not doing well.

24. On Tuesday, March 17, 2009, petitioner telephoned D.L. to inform D.L. that she would not be at her placement. D.L. and petitioner spoke that day and petitioner informed D.L. that her husband was still in a lot of pain and that she was unable to get help from her mother-in-law. They agreed that it did not look promising for petitioner to return to her placement that week.

25. Petitioner did not telephone her work-site supervisor on March 17, 2009.

26. On March 17, 2009, D.L. e-mailed the work-site manager (H.N.) to let her know that she spoke with petitioner and that petitioner informed D.L. that the doctor said a one to two week recovery for petitioner's husband. D.L. identified transportation and childcare as additional barriers to petitioner returning. D.L. asked whether H.N. heard directly from petitioner. H.N. replied by e-mail that she had not heard directly and she had cited petitioner as nsnc (no show, no cause) for the absence because she expected to hear directly from petitioner.

27. On March 18, 2009, petitioner contacted D.L. that she was ill and would not be able to go to her work readiness class. Petitioner was not slated at her work-site that day although there was some confusion from H.N. who first thought petitioner should be coded nsnc for that day. Petitioner called H.N. later that day and left a voice mail that she would not be at RN for the remainder of the week.

28. On March 18, 2009, D.L. sought authorization to sanction petitioner for failure of petitioner to call H.N. at her work-site on March 17, 2009. D.L. informed H.N. by e-mail on March 18, 2009 that petitioner was being sanctioned for not calling H.N. two times[2] and wrote:

> I feel badly that I know she is going through a tough time right now, and she is trying, but she's only got ½ way there. I agree that if our mission is to prepare people for the real world, if consequences are not realistic, we are not helping anyone in the long run.

29. On March 19, 2009, the Department sent petitioner a Notice of Decision that her RUFA grant would be sanctioned April 1, 2009. Petitioner filed a timely appeal on March 23, 2009 and has been receiving continuing benefits.

30. Subsequent to the hearing, petitioner has followed through with seeking help for her depression. Subsequent to

[2] The two calls were changed to one call for the sanction after D.L. realized that petitioner was not supposed to be at RN that day and H.N. changed the nsnc for March 18, 2009.

the hearing, the Department has modified petitioner's hours to twenty hours per week.

ORDER

The Department's decision is reversed.

REASONS

The Reach Up program is predicated, in part, on helping families become self-sufficient. The focus on self-sufficiency does not exist in a vacuum. The Reach Up program is a remedial program. The Legislature recognized the program's remedial nature in their legislation. The Reach Up purposes are set out in 33 V.S.A. § 1102(a) as follows:

> (1) to assist families, recognizing individual and unique characteristics, to obtain the opportunities and skills necessary for self-sufficiency.
>
> (2) To encourage economic independence by removing barriers and disincentives to work and providing positive incentives to work.
>
> (3) to support parental nurturing.
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> . . .
>
> (6) To protect children by providing for their immediate basic needs, including food, housing and clothing.
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> . . .

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). 33 V.S.A. § 1106, W.A.M. §§ 2340 (participation linked to the applicant's needs and abilities) and 2350. Further, 33 V.S.A. § 1102(b)(2) states that a critical element to such a program includes:

> Cooperative and realistic goal setting, coupled with individualized case management that addresses each individual's situations and barriers to self sufficiency.

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).

The regulations allow for reconsideration of a recipient's barriers so that a FDP can be adjusted. See W.A.M. § 2361.3.

The regulations allow the Department to seek a sanction when a recipient has not complied with the terms of his/her FDP. Sanctions are an appropriate response if the recipient does not have good cause for noncompliance. 33 V.S.A. § 1112(a), W.A.M. § 2370.1. Good Cause is defined at W.A.M. § 2370.3 as:

> Circumstances beyond the control of the participant may constitute good cause for an individual's noncompliance.

Examples of good cause are found at W.A.M. § 2370.32 and they range from inability to arrange transportation or childcare, requirement to appear in court, a family emergency, medical needs, to domestic violence.

The RUFA program is a remedial program, not a punitive program. Implementation of RUFA is based on an individual assessment and plan that recognizes the particular strengths and barriers of each participant. Each participant needs a tailored plan that is continually monitored and adapted to the participant's changing circumstances; in particular, the changing needs of the participants. Just as the Department needs to tailor case management to the individual participant; the Board needs to individually consider the totality of the facts and the application of the regulations to those facts in RUFA sanctions cases.

This case has several unusual features to consider.

First, two conciliations and a sanction authorization fall within a six week period. Ordinarily, the Board sees cases in which there is a several year period and a longer history setting out the relationship between the Department and participant; this history provides context for reviewing both the Department's and the participant's responsibilities under the RUFA program. The timing raises questions whether the petitioner was given sufficient time to address her responsibilities and whether the petitioner was given sufficient supports from the Department to move towards self-sufficiency.

Second, the record shows that petitioner was falling apart as she dealt with multiple stressors during February and March 2009. Calibrating a FDP is dependent on a thorough assessment of barriers and understanding of a participant's needs at a particular point of time. Petitioner's case is troubling since her case manager recognized that petitioner was under increasing stress during February and March 2009 and even attempted to have her work requirements modified in February 2009. Petitioner's work requirements were not modified. Instead, she was conciliated twice within a two week period despite ample evidence that she was floundering.

Petitioner's stressors cannot be considered as separate entities. The totality of her situation needs to be considered. Petitioner has multiple barriers. Education is a barrier; she does not have a GED. Without a GED, her employment options are limited. Transportation is a barrier and has been properly identified by the Department. Petitioner's emotional health is a barrier. The case manager's case notes and testimony recognized that petitioner was depressed and overwhelmed with her family situation and her children's needs. Within a two week period, the information from the senior center supervisor shows a shift from a good employee to a changed attitude including moodiness, not being petitioner's "normal self". That rapid shift in petitioner's demeanor is a strong indication that there was an underlying problem. Petitioner's family situation presented a barrier. Her nine year old missed school to such an extent that the local police department was asked to investigate. Her six year old exhibited anger and behavioral problems. All these barriers came together to overwhelm petitioner during February 2009.

Petitioner faced new challenges in March 2009. On March 13, 2009, petitioner's husband had an emergency appendectomy. Petitioner was unable to work the following week due to her

husband's needs, her lack of child care, and lack of transportation. During this time, petitioner kept her case manager informed. On one day, March 17, 2009, petitioner did not call her work-site supervisor directly although her work-site supervisor had notice from petitioner's case manager that petitioner was not able to come to RN due to her husband's illness and might not be able to attend for the full week due to the barriers petitioner faced.

Third, the Department argues that they have no issue with the underlying reasons that caused petitioner to be absent from her work-site, their argument is that petitioner did not call her work-site supervisor. The problem with the Department's argument is that the FDP failed to identify all of petitioner's barriers and failed to incorporate strategies to support and help petitioner. The crises petitioner dealt with provide good cause for not complying with the letter of her FDP. Any violation should be considered de minimis. To penalize petitioner in this situation is inconsistent with the underlying intent of the Legislature.

Accordingly, the Department's decision to sanction petitioner is reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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