

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/17-108
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Appeal of)
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INTRODUCTION

Petitioner appeals the sanction of her household's Reach Up Financial Assistance ("RUFA") by the Vermont Department for Children and Families ("Department"). The issue is whether petitioner has established good cause for failing to attend a scheduled appointment with her RUFA case manager. The following facts are adduced from a hearing held March 30, 2017 and documents submitted therein.

FINDINGS OF FACT

1. Petitioner has two minor children and receives RUFA on behalf of her household. The household has intermittently included her spouse, the father of their children.

2. As a RUFA recipient, petitioner is subject to a Family Development Plan ("FDP"), which outlines her employment goals, along with activities and related tasks she must undertake to attempt to meet her employment goals.

3. Petitioner was scheduled for an initial meeting with her case manager on January 11, 2017, to develop her FDP. Petitioner was noticed of this meeting but did not attend, asserting that she confused it with a January 12 meeting she had with a Family Services case manager.

4. Due to the missed January 11 meeting, petitioner was offered the opportunity for "conciliation" of her noncompliance with her RUFA requirements. Successful conciliation would prevent possible sanction - a reduction - of her benefits.

5. Petitioner met with a RUFA case manager (covering for her assigned RUFA case manager) on January 24, 2017. As a result of that meeting, she agreed to participate in the conciliation process and signed a "Conciliation Resolution Letter" which stated the following (in pertinent part and emphasis in original):

I will cure my conciliation by attending two consecutive meetings with [my case manager]. I will meet with [case manager] on 1/26/17 at 1:00 PM and on 02/03/17 at 10:30 AM. I understand that if I don't attend two meetings in a row without missing[sic] before the resolution period ends on 2/24/17, my grant will be sanctioned.

I agree to begin to participate as outlined above within five days and continue to participate through 15 days.

6. The letter was signed by petitioner and dated January 24, 2017. It included additional language that her

failure to follow through on the agreement, "without good cause," would result in a sanction or closure of her RUFA, depending upon whether she has received 60 or more countable months of assistance. Petitioner has received less than 60 countable months of RUFA, so was subject to potential sanction of her RUFA.

7. Petitioner attended the January 26, 2017 meeting with her case manager. At that time, they developed an FDP that both petitioner and her case manager signed. The FDP included two references to their next meeting on February 3, that attending the meeting was an element of conciliation of the previously missed (January 11) meeting, and that failure to attend the February 3 meeting without good cause or calling ahead of time would result in her RUFA being sanctioned. Petitioner was handed a copy of the FDP at the time of the meeting.

8. Petitioner missed the February 3, 2017 meeting. She did not call ahead of time or contact her case manager about the meeting. As a result, her case manager sent her a letter dated February 3, 2017 stating that she had missed the appointment without calling ahead, requesting that she contact her by noon on February 10, 2017 to discuss why she missed the appointment, and warning that failure to contact

her about the missed appointment would result in commencement of the process to sanction her RUFA.

9. Petitioner did not contact her case manager by February 10. As a result, and following consultation with her RUFA team leader, her case manager authorized the sanction of petitioner's RUFA. The Department mailed petitioner a notice dated February 14, 2017 that her RUFA would be sanctioned for noncompliance, effective March 1, 2017. The sanction would result in a \$75.00 reduction in petitioner's monthly RUFA of \$709.77. The reduction would continue until the sanction was cured (typically this is achieved by attending two consecutive meetings with the RUFA case manager).

10. Petitioner appealed the sanction decision and is receiving continuing benefits (her full RUFA) pending appeal.

11. At hearing, petitioner acknowledged that she "completely forgot" about the February 3 meeting. She indicated that she had been homeless and had just found an apartment (into which she moved February 1), and that she was focused on finding a place to live for her and her family.

12. Petitioner further raised that she did not agree with being in the conciliation, in the first place, for missing the January 11 meeting (despite having signed the

Conciliation Resolution Letter referenced above). She acknowledged missing the January 11 meeting and does not recall any specific reason for missing that meeting, but indicates it was probably because she was homeless and juggling numerous family obligations and stressors.

13. Petitioner generally characterized her system for tracking her appointments and meetings as "really not great," leading to other missed appointments around the same time.

14. Petitioner asserted that around the time at issue the Department used the wrong mailing address for her and she experienced problems accessing her mailbox after she moved in to her new apartment. While it appears that the Department mailed notices and letters to petitioner at the address(es) she provided, in any event she does not dispute receiving notice of the above meetings in-person from her RUFA case manager.

ORDER

The Department's decision is affirmed.

REASONS

Review of the Department's determination is de novo. As this concerns a reduction of petitioner's benefits, the Department has the burden of establishing, by a preponderance

of evidence, the appropriateness of its determination under the applicable rules. Fair Hearing Rule 1000.3.0.4.

The general purpose of the Reach Up program is to encourage economic self-sufficiency, support nurturing family environments, and ensure that children's basic needs are met. See Reach Up Rules § 2200. Reach Up regulations provide the Department with the authority to impose a financial sanction on participants based on noncompliance. See Reach Up Service Rules ("RUSR") § 2375. Under the rules:

Reach Up participants must comply with all services component requirements. Noncompliance may be the result of a de facto refusal, which is implied by the participant's failure to comply with a requirement (rule 2371.1), or an overt refusal (rule 2371.2). The department will excuse noncompliance supported by good cause (rule 2373).

RUSR § 2370.

A type of noncompliance includes a failure or refusal to "attend or participate fully in FDP activities." RUSR § 2371. The regulations also provide for a conciliation process through which "disputes related to an individual's failure to comply with services component requirements are resolved." RUSR § 2374. Successful completion of the conciliation process will prevent a financial sanction from being imposed. See RUSR § 2374.1. Conciliation can only be

initiated if the participant has not had a prior dispute conciliated within the same calendar year. RUSR § 2374.

Petitioner here was eligible for the conciliation process, which was initiated by her case manager, with her apparent agreement. An unsuccessful conciliation, without good cause, results in imposition of a financial sanction of the participant's RUFA. See RUSR § 2374.4. Among the bases for an unsuccessful conciliation is "when the individual . . . fails without good cause to participate satisfactorily in activities outlined in the conciliation resolution plan and included in the revised FDP for the required time period." RUSR § 2374.4.

There is no dispute that petitioner missed the January 11, 2017 and the February 3, 2017 meetings. These meetings were substantive elements of, respectively her Reach Up services program and her conciliation resolution plan. See e.g., Fair Hearing Y-10/14-1066; Fair Hearing N-04/15-461; Fair Hearing No. B-09/15-1007; and Fair Hearing No. B-09/15-1007. The sole remaining question is whether petitioner has established good cause for such failure.

Good cause is generally defined as "circumstances beyond the control of the participant" and the rules include a non-exhaustive list of the types of circumstances which may

constitute good cause for noncompliance. See RUSR § 2373. Petitioner's reason(s) for missing the appointment are not specifically listed in the rules. The reasons she has given amount to an acknowledgment that she (unintentionally) forgot about the meetings due to the complicated and difficult issues she was facing at the time, principally having two young children while being homeless, along with her admittedly poor organizational system. As the Board has held in previous cases involving similar facts, this does not establish circumstances beyond her control i.e., good cause, for failing to attend the appointments. See e.g., Fair Hearing No. B-11/15-1213; Fair Hearing No. B-09/15-1007; Fair Hearing No. B-07/15-718.

As such, the Department's decision is consistent with the rules and the Board must affirm. See 33 V.S.A. § 3091(d); Fair Hearing Rule No. 1000.4D.

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