

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-12/08-540  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, sanctioning her Reach Up Financial Assistance (RUFA) grant. The issue is whether petitioner failed to comply with her Family Develop Plan (FDP) without good cause.

The decision is based on the evidence adduced at hearing and subsequent briefing.

FINDINGS OF FACT

1. The petitioner is a single parent of two young children, ages four and two years old. The petitioner receives RUFA assistance from the Department.

2. S.F. is a Reach Up case manager. Petitioner is part of S.F.'s caseload.

3. On or about October 27, 2008, petitioner and S.F. entered into a Family Development Plan (FDP) setting out petitioner's goals and the respective responsibilities of

both petitioner and the Department to help petitioner reach her goals.

4. Petitioner does not have a car and does not have a driver's license. Petitioner lives in Swanton; her children's daycare is in Highgate. Her FDP activities are in St. Albans. The FDP identified transportation as a barrier to petitioner's participation in Reach Up activities and set out transportation support services.

S.F. made arrangements with Ready 2 Go (R2G) to provide transportation for petitioner and her children. Under the terms of this arrangement, R2G first dropped off petitioner's children at daycare and then dropped off petitioner at Making It Work (MIW) in St. Albans. The FDP required petitioner to call R2G if she needed to cancel transportation if she was not going to use R2G.

R2G maintained contemporaneous e-mail correspondence with S.F. and kept her apprised of no-shows. R2G e-mails show petitioner as a no-show from November 3 to 7, 2008.

5. MIW is operated by Vermont Adult Learning. MIW is operated Monday through Thursday from 9:00 a.m. to 3:00 p.m. Friday is used as a make-up date. MIW teaches job readiness and job search skills. MIW keeps an attendance log for RUFA

participants that they share daily with Reach Up case managers.

6. As part of the FDP, petitioner agreed to attend classes at MIW from October 27, 2008 through November 21, 2008. Petitioner agreed to call S.F., R2G, and Vermont Adult Learning if she was unable to attend. Petitioner also agreed to document good cause for absences by the end of the week in which the absence occurred.

7. In the FDP, petitioner agreed that if she had more than sixteen hours of excused absences or no good cause absences, Friday would be used for make up hours.

8. S.F. testified that her practice is to allow up to sixteen hours of excused absences or absences whose time does not need to be made up. Excused absences can include absences for RUFA good cause reasons.

9. On November 20, 2008, S.F. asked for sanction authorization from her supervisor. The sanction authorization request noted that petitioner had not attended MIW on November 3 through 7, 2008 and November 19, 2008. S.F. wrote that petitioner had been granted sixteen hours of excused absences for November 4 (six hours), 5 (six hours), and 6 (four hours). On November 17, 2008, MIW agreed to keep petitioner in the program provided there were no more

absences. Petitioner informed S.F. that she had a well child doctor's appointment on November 19, 2008; S.F. informed petitioner she should change her medical appointment because it would not be an excused absence.

The supervisor signed the sanction authorization on November 20, 2008.

10. On November 20, 2008, the Department sent petitioner two Notices including (1) Reach Up Sanction Reasons and (2) Appointment reminder for sanction meeting on December 2, 2008. On November 21, 2008, the Department sent petitioner a Notice of Decision setting out that petitioner's RUFA grant would be reduced by \$75 starting December 1, 2008. Petitioner requested a fair hearing on November 21, 2008 and has been receiving continuing benefits.

11. The December 2, 2008 sanction meeting did not occur. S.F. testified that she did not hold the sanction meeting because petitioner filed for fair hearing.

12. Absences. Absences will be set discussed by date. Petitioner's testimony about what happened on a particular date was sketchy. For example, she testified that R2G did not show up on November 5, 2008 when they did but were unable to transport her because they did not have sufficient car seats. S.F. kept contemporaneous records regarding what

happened on a particular date making her testimony more trustworthy regarding events on a particular date.

13. November 3, 2008. S.F. had notified R2G of petitioner's new address so they could change their route. Petitioner had moved on November 1, 2008. S.F. received an e-mail from R2G that petitioner was a no show. S.F. and petitioner spoke by telephone. Petitioner stated to S.F. and at hearing that she waited for R2G but that they did not come. It appears that R2G and petitioner missed each other because they were not at the same location. S.F. testified that she let the absence go.

14. November 4, 2008. S.F. testified that she spoke to petitioner that day after receiving an e-mail from R2G. S.F. treated the day as an excused absence because petitioner's gas hook up was scheduled that day. S.F. testified that she made arrangements with R2G and petitioner for petitioner to make up her missed November 3 class on November 7, 2008.

15. November 5, 2008. S.F. spoke to petitioner after notification from R2G that petitioner was a no show. Petitioner explained that R2G could not transport her because they did not have sufficient car seats for her two children. R2G verified that they were unable to transport petitioner because of car seat problems. In the R2G e-mail of November

5, 2008 to S.F., they explained that petitioner had been using one of their car seats for one of her children. Due to a R2G schedule change, they picked up another person before petitioner who used the car seat petitioner usually used for one of her children. R2G could not wait while petitioner retrieved her other car seat from her apartment.

16. November 6, 2008. Petitioner took her sick daughter to the pediatrician. The pediatrician's office supplied a note dated November 6, 2008 confirming that petitioner's daughter was seen. At hearing, the parties stipulated that petitioner had good cause not to attend MIW this date.

17. November 7, 2008. Petitioner testified that she was unable to attend MIW because one of her children was sick and her day care does not allow sick children to attend. Petitioner did not call S.F or MIW or follow up with a doctor's note on that day. Petitioner did not discuss her reasons with S.F. when they met after November 7, 2008.

18. November 19, 2008. Petitioner and S.F. met on November 17, 2008 at MIW. During that meeting, petitioner told S.F. that one of her children was scheduled for a well child visit on November 19, 2008.

S.F. testified that she told petitioner that a well child visit would not be an excused absence and advised petitioner to reschedule the visit.

Petitioner testified that she took her daughter to the well child visit on November 19, 2008 for vaccinations. She testified that she had rescheduled twice before and had been told that she would not be able to get an appointment for two months if she cancelled her appointment.

19. S.F. saw petitioner at MIW on November 20, 2008. At that time, S.F. informed petitioner that she was seeking a sanction because petitioner had an unexcused absence on November 19, 2008. At that time, S.F. and petitioner worked on a new FDP.

ORDER

The Department's decision to sanction petitioner is affirmed with the limitation that the sanction is for one month.

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 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.

(2) To encourage economic independence by removing barriers and disincentives to work and providing positive incentives to work.

. . .

(6) To protect children by providing for their immediate basic needs, including food, housing and clothing.

. . .

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 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 to the creation of a realistic plan. Transportation is listed as a



barrier in 33 V.S.A. § 1101(5). The Department identified transportation as a barrier and included assistance for petitioner to attend her FDP requirements.

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, illness of the participant or a family member, to domestic violence. The examples place an affirmative obligation upon the participant to inform the appropriate person (transportation provider, work site, etc.) as soon as possible.

Under the regulations, the case manager has the initial responsibility to make a good cause determination. W.A.M. § 2370.2. In addition, the regulations do not set an upper limit of hours missed as part of a good cause determination.

Each absence needs to be looked at separately. If all absences meet the criteria for good cause, there will be no sanction.

The absences for November 3 and 5, 2008 (transportation) and November 6, 2008 (sick child) fall within the good cause criteria. The Department treated November 4 as an excused absence; we will treat it likewise as excused.

The absence on November 7, 2008 is problematic. There is not sufficient evidence from petitioner to meet the good cause criteria. In part, this is due to petitioner's lack of compliance with the notification requirements in her FDP and failure to subsequently explain what happened. In part, this is due to a lack of evidence supporting a claim that petitioner's daughter was ill on November 7 and lack of evidence from the day care corroborating an absence for illness for that date. Petitioner was given additional time to submit documentation, but did not submit documentation corroborating her testimony. This absence does not fall within the good cause exception.

Petitioner was informed on November 17, 2008 that her planned well child doctor's visit for November 19, 2008 would not be considered an excused absence and advised to change her appointment. Petitioner did not do so. Petitioner's

testimony that to reschedule would take two months is not persuasive.

The Department had sufficient cause under the regulations to sanction the petitioner. However, part of the sanction process is to help the recipient cure the sanction. To that end, a sanction meeting is scheduled. W.A.M. § 2372. In this case, the sanction meeting did not occur as scheduled because the petitioner filed for fair hearing. In doing so, appropriate steps were not taken for petitioner to cure her sanction.<sup>1</sup>

RUFA is a remedial program, not a punitive program. Before imposing an ongoing sanction, it is important that the Department has fulfilled its obligations. As stated in Fair Hearing No. 12,720:

[i]n sanctioning those mandatory participants who do refuse to participate—an act that has severe consequences for that individual's entire family—the Department must comply with the strict letter of the regulations. In this case it did not do so.

See Fair Hearing No. 20,824.

In the best case scenario, the Department imposes a one month sanction even if the recipient cures the sanction immediately. W.A.M. § 2373.12. Because the sanction meeting

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<sup>1</sup> Petitioner is now back on track with the Department and her work requirements.

was not rescheduled, the sanction should be limited to one month.

The underlying decision by the Department to sanction petitioner is affirmed with the caveat that the sanction is for one month's duration. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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