

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/08-109
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division, imposing a sanction upon her Reach Up Financial Assistance (RUFA) grant for a closed period of one month. The issue is whether the petitioner failed to comply with Reach Up requirements without good cause. The decision is based on the testimony adduced at Fair Hearing and the exhibits admitted on behalf of the Department.

FINDINGS OF FACT

1. The petitioner is a single parent. She has custody of three minor children and guardianship of two children. In addition, petitioner has a sister with Multiple Sclerosis; petitioner has power of attorney and cares for the needs of her sister's two children.

2. Petitioner was assigned to J.C.'s caseload in the fall of 2007 when petitioner's then case manager left her

job. J.C. is a RUFA case manager. J.C. is supervised by L.S.

3. During December 2007, J.C. started to explore with L.S. the possibility of modifying petitioner's work requirements due to the challenges petitioner faced caring for seven children, arranging childcare around school hours, and transportation. Petitioner was facing a twenty hour per week work requirement.

4. J.C. met with petitioner and a potential worksite supervisor at petitioner's home on January 10, 2008. The potential worksite supervisor was the diversity coordinator for a local school district (this person will be referred to as CSP supervisor). J.C.'s case notes indicate the purpose of the meeting included an explanation of the community service placement program, discussion of needed car repairs and discussion of the children's needs. Petitioner planned to do her work requirement through a community service placement (CSP) at the Diversity and Equity Office of a local school district. Petitioner would be required to work fifteen hours per week.

5. The Department formally modified petitioner's work requirement on January 21, 2008 reducing the twenty hour per week requirement to fifteen hours per week. The modification

noted petitioner's barriers including child care and transportation.

6. On January 31, 2008, petitioner and J.C. signed a Family Development Plan (FDP). The FDP listed a fifteen hour per week CSP. As part of the FDP, petitioner was required to contact J.C. and the CSP supervisor if petitioner could not attend her placement. The FDP noted childcare and transportation as barriers. Petitioner's target start date for her CSP was February 6, 2008.

7. The target start date was pushed back to February 20, 2008 so that petitioner's van could be repaired. The Department paid for repairs.

8. On February 19, 2008, J.C. telephoned petitioner. J.C. testified that she was disconnected. J.C. telephoned again and left a message for petitioner explaining that she did not know what happened when they were disconnected and asking petitioner to call her to make sure petitioner was all set to start her CSP on February 20, 2008. Petitioner did not return this call. J.C. also left a telephone message for petitioner's CSP supervisor of her difficulties contacting petitioner and her expectation that petitioner would start her CSP placement on February 20, 2008.

9. Petitioner went to her CSP on February 20, 2008 but her supervisor was not present. Petitioner was unable to start her CSP that day. Petitioner did not call J.C. to let her know that she was unable to start her placement on February 20, 2008.

10. J.C. saw petitioner with a friend at the Department office the morning of February 20, 2008. Petitioner did not try to inform J.C. that she was unable to start her CSP that day because her supervisor was not present. J.C. took no action to ask petitioner why she was not at her placement.

11. When J.C. saw petitioner at the Department offices on February 20, 2008, J.C. assumed that petitioner was not following through on her FDP. J.C. contacted L.S. to discuss sanctioning petitioner.

12. Petitioner started her CSP on February 21, 2008. The Department received verification from the CSP supervisor on February 21, 2008 that she was out of her office on February 20, 2008 so that petitioner could not start her CSP until February 21, 2008.

13. On February 21, 2008, L.S. and J.C. wrote petitioner to let her know that they planned to sanction her. Although they referenced that petitioner did not start her CSP on February 20, 2008, they identified petitioner's

failure to communicate with J.C. as the reason for the sanction. They wrote that for petitioner to have started on February 20, 2008, petitioner needed to contact her CSP supervisor prior to that date to make arrangements. They noted petitioner's failures to contact J.C. by not returning the February 19, 2008 telephone message and not informing J.C. about the reasons she did not start the CSP on February 20, 2008. The sanction was approved March 3, 2008.

14. Petitioner had two prior conciliations on December 30, 2003 and March 31, 2004.

15. The actual notice to sanction petitioner was mailed on March 5, 2008 and included a \$75 sanction for the month of April 2008.

16. Petitioner testified that she has difficulties communicating with J.C. Petitioner felt that she was treated like a child by J.C. in the February 19, 2008 telephone message. Petitioner did not give a reason why she did not notify J.C. on February 20, 2008 about her inability to start her CSP on February 20, 2008.

17. L.S. verified that there are communication difficulties between petitioner and J.C. L.S. has sat in on a meeting between the two of them. L.S. has communicated to both petitioner and J.C. about their need to work together

and both agreed to do so. L.S. testified that petitioner has communication responsibilities that are independent from her case manager's communication responsibilities.

ORDER

The Department's decision to sanction petitioner for one month is affirmed.

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

. . .

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 a recipient's abilities, identify barriers impeding an recipient'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.

The FDP sets out the recipient's work goal and the parties' respective responsibilities regarding activities, work requirements, and schedules. W.A.M. § 2361.

The Department identified petitioner's barriers and found ways to assist her through modifying the work hours, moving back the CSP start date, and paying for car repairs. Petitioner's FDP required her to start her CSP on a particular date and required her to notify both J.C., her case manager, and her CSP supervisor for absences or reasons she was unable to be at the CSP site.

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 include illness, emergency situations, lack of transportation, etc.

Under the regulations, the case manager has a responsibility to make a good cause determination. W.A.M. § 2370.2 states:

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. . . The case manager shall complete the good cause determination within ten days of becoming aware of the individual's noncompliance.

The letter L.S. and J.C. sent on February 21, 2008 can be seen as an example of setting out the "pattern of noncompliance" and the difficulties in determining good cause without communication from petitioner.

The Department is seeking a sanction due to petitioner's failure to communicate with J.C. Petitioner's failure to communicate includes petitioner's failure to return the February 19, 2008 telephone call from J.C. and petitioner's failure to inform J.C. on February 20, 2008 that she was unable to start her CSP that day. The Department noted that

petitioner was at their office but did not try to inform J.C. about what happened.

The petitioner did start her CSP one day after the projected start date of February 20, 2008. Her CSP supervisor was not present on February 20, 2008. The failure to start her CSP on February 20, 2008 should not be seen as a cause for a sanction; the sanction issue is one of communication only.

Petitioner does have an independent responsibility to communicate with J.C. as set out in her FDP. Petitioner did not do so and did not provide a reason beyond the strained relationship with J.C. Having a strained relationship is not a reason for good cause. Although one can question why J.C. did not independently ask petitioner why she was at the Department office rather than her placement, the petitioner still has an independent responsibility to follow through on her FDP requirements.

Based on the foregoing, the Department's decision to sanction petitioner for one month is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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