

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. A-07/14-594
)
Appeal of)

INTRODUCTION

Petitioner appeals closure of her household's Reach Up Financial Assistance ("RUFA") by the Vermont Department for Children and Families ("Department"). The following facts are adduced from testimony and representations of the parties along with documents submitted during hearings held September 19 and November 14, 2014, as well as post-hearing submissions of the parties closing the record as of February 2, 2015.

FINDINGS OF FACT

1. Petitioner lives with her spouse and their four minor children. Her household receives RUFA and as such petitioner is subject to Reach Up requirements including a Family Development Plan ("FDP"). At the time of the events in question, petitioner's children were ages fifteen, ten, five, and three.

2. Petitioner had an appointment with her Reach Up case manager on July 8, 2014. The appointment was scheduled on June 19, as part of a phone conversation between

petitioner and her case manager. No written notice of the meeting was given or mailed to petitioner, although it was mentioned at a subsequent phone call between petitioner and her case manager on July 1.

3. On July 7, petitioner's spouse began transitioning from methadone to a new medication.

4. Petitioner did not attend her July 8 meeting. Her case manager called her at home shortly after the meeting was supposed to start. Petitioner stated she was overwhelmed, without specifying why, and had forgotten the meeting, offering to come in late. Her case manager declined this offer based on her schedule, informing petitioner she would be facing a likely closure of benefits and her case would be referred back to the Economic Services Division ("ESD").¹ Petitioner became upset, uttering profanities and terminating the phone call. Petitioner acknowledges she "said some things she shouldn't have" to her case manager.

5. Shortly after the phone call terminated, petitioner's spouse texted her ESD case manager that petitioner "had to take care of [the] kids because I switched

¹ Petitioner's then-case manager is with the Division of Vocational Rehabilitation - she had been assigned based on petitioner's medical deferment and potential SSI eligibility. At the time of the meeting her case was in the process of transfer back to the ESD.

from methadone to be up and I have Ben [sic] sick, she didn't mean to miss her appointment. This is to [sic] much for her to deal with. I need you to try to understand. If I need to have my counselor call you to prove I was litterlyv [sic] Sick. We are really trying here."

6. At the time, the Department did not ask petitioner to provide any additional documentation or other verification regarding her spouse's illness and transition from methadone as referenced in the text message. Her VR case manager mailed her a written notice, dated July 8, that she had failed to attend the July 8 meeting and giving her until July 14 to contact her with a good cause reason.

7. Petitioner and her spouse insist they never received the July 8 good cause letter. In any event, the record makes clear that the VR case manager in effect completed her good cause inquiry to her satisfaction when she spoke with petitioner on the phone that day. There is no record of the spouse's text, sent approximately 15 minutes after that phone call, being communicated to the VR case manager. A case action note from the VR case manager on July 9 makes no reference to the text message, stating only that petitioner gave no reason for missing the meeting and that she "WILL CLOSE ON MONDAY WHEN THE GOOD CAUSE IS DUE."

(italics added). The Department now describes the spouse's explanation of the circumstances as "only after the fact" of the phone call, in turn lending little value to the July 8 written request for a showing of good cause.

8. Petitioner's failure to attend the July 8 appointment was reviewed by a supervisor and the decision to close her household's benefits was made and noticed on July 24, effective August 15. This appeal followed, with petitioner receiving continuing benefits during its pendency.

9. At hearing, petitioner submitted a letter from her spouse's social worker with a mental health agency confirming that he switched his medication beginning July 7, preceded by three days of taking no medication. The social worker states that petitioner's spouse reported being ill during this time period and that "[e]xperiencing severe flu-like symptoms is common for clients going through this transition and often prohibits engagement in daily activities such as work or school."

10. Petitioner's spouse testified to experiencing a variety of symptoms during this time, including nausea, vomiting, fatigue, restlessness and sleeplessness, in particular sleeping very poorly the night before July 8. The spouse's testimony is deemed credible and it is specifically

found that he experienced these symptoms, of a severe and various nature, on and around July 8.

11. At hearing, the Department (through the VR case manager) did not accept the social worker's documentation because it was not from a physician or someone with a similar medical background. However, the VR case manager stated at hearing that if what the spouse said about his condition at the time is accurate, that would "change things." The case manager had never met petitioner and did not feel she had a personal relationship with her or was familiar enough with her family to "look at the family" in assessing the circumstances. The worker's overall explanation for not finding good cause is that the information and testimony provided by petitioner and her spouse "doesn't feel enough."

12. Petitioner testified at hearing. Petitioner states she has been diagnosed with bi-polar, anxiety, and agoraphobia. She felt overwhelmed at the time of the appointment because her four children were home and needed to be taken care of, and instead of having her spouse's assistance, she also needed to care for him. She recalled that the decision to change his medication from methadone happened quickly and without much advance notice. Petitioner's testimony is deemed credible.

13. Post-hearing, petitioner submitted a letter from a Board-certified registered nurse, with the same mental health agency as the social worker, that her spouse "was transitioned from methadone to Suboxone back in July of 2014. This transition is very difficult for all patients who undergo this change in medication as it precipitates opioid withdrawals. These symptoms may include any and all of the following: nausea/vomiting/abdominal cramps/sweats/body aches/diarrhea."²

14. The Department maintains that the documentation submitted by petitioner and her spouse is inadequate to establish good cause. In addition to verification of the spouse's condition during the relevant time, the Department insists on medical verification from petitioner that establishes a basis for her contention that she was overwhelmed by the circumstances.

15. Petitioner's household has received 60 or more cumulative months of RUFA.

ORDER

² It is noted that petitioner's spouse expected to produce daily summaries of his condition from his methadone clinic, because he said he complained about his symptoms on a daily basis. That he did not produce these summaries does not ultimately contravene the weight of evidence otherwise establishing his condition at the time.

The Department's decision is reversed.

REASONS

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. Reach Up Rules § 2200. Reach Up regulations mandate that the Department close benefits when a household that has received 60 or more cumulative months of assistance is noncompliant with program requirements. See Reach Up Services Rules ("RUSR") § 2238.1 ("For families who have received 60 or more countable, cumulative months of assistance, noncompliance with Reach Up services component requirements, without good cause, or not fulfilling the work requirement, regardless of good cause, will result in termination of the family's Reach Up grant.").³ Non-compliance is defined generally by Rule 2370:

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).

³ A family whose Reach Up grant is closed for noncompliance without good cause may be eligible again at any time following a two month break in assistance. See Reach Up Rules § 2238.2(A).

RUSR § 2370.

A type of non-compliance includes a failure or refusal to "attend or participate fully in FDP activities." RUSR § 2371. Case managers are required under the rules to review the FDP with participants on a monthly basis. See RUSR § 2333. There is no dispute that petitioner failed to attend the July 8 appointment and that the appointment was a valid Reach Up services component. The sole question is whether she has established good cause for such failure.

"Good cause" under Reach Up regulations is generally defined as:

Circumstances beyond the control of the participant may constitute good cause for an individual's noncompliance. Some good cause reasons relate to employment requirements (rule 2373.1), and some relate to other services component requirements (rule 2373.2).

RUSR § 2373.

Reach Up legislation further provides that "[t]he Commissioner shall establish good cause rules for temporary or unexpected conditions or circumstances beyond the control of the participating parent which result in a parent's inability to participate in a Reach Up family development plan requirement . . ." 33 V.S.A. § 1115(e); see also 45 CFR § 261.13 (" . . .if an individual fails without good cause to comply with an individual responsibility plan that he or she

has signed, the State may reduce the amount of assistance otherwise payable to the family, by whatever amount it considers appropriate," in addition to any other penalties under the program).

The record establishes a varying and inconsistent approach in the Department's review and determination of good cause for petitioner's failure to attend the July 8 meeting. While not dispositive by itself, no written notice was given to petitioner of the meeting about which she ultimately and admittedly forgot. When petitioner was contacted by her case manager, she was informed that her case would be referred back to the ESD. Petitioner immediately contacted her ESD case manager and explained, albeit through her spouse, why she had missed the meeting, for reasons that have remained consistent throughout this appeal.

In reviewing the potential for good cause, petitioner's VR case manager apparently never had or considered this information, indicating in her case note at the time that petitioner had given no reason for missing the meeting. After the appeal was filed, the Department characterized petitioner's efforts to contact her ESD case manager as "after the fact," despite such efforts occurring a mere 15 minutes after the phone conversation with her VR case manager

and when that case manager had indicated the case would be referred to the ESD.⁴ The Department takes this position despite having sent petitioner a letter dated July 8 giving her additional time to contact her case manager to establish good cause.

The record also shows a varying position on what would constitute "good cause." Petitioner's VR case manager stated at hearing that if the condition of petitioner's spouse could be medically verified or if how he described his symptoms is otherwise determined accurate, that would change her perspective. On the other hand, the Department has indicated that verification of *petitioner's* condition - being "overwhelmed" by the circumstances - must also be medically verified.

While this begs the question of whether the Department's failure to consider all the information provided at the time was prejudicial to petitioner on the merits, this question need not be reached by the Board. Petitioner in fact did establish with credibility and sufficient documentation that her spouse was experiencing severe symptoms of his transition to a new medication over a relatively short timeframe. Her

⁴ The Department also notes it was petitioner's spouse, not petitioner, who contacted the ESD case manager. This only helps to confirm petitioner's assertion that she was overwhelmed at the time.

explanation of these events and the circumstances is credible; her being unexpectedly overwhelmed with caring for her family and thus missing her appointment is reasonable.

This establishes the presence of "circumstances beyond her control" as the rule generally defines good cause. See RUSR § 2373; 33 V.S.A. § 1115(e); and 45 CFR § 261.13. Even assuming *arguendo* that petitioner's good cause reason must be consistent with a specifically listed reason in the rules, this also establishes good cause for her failure to attend the meeting due to the illness of a family member requiring her immediate attention. See RUSR § 2373.2(E). Even if petitioner might have theoretically planned for these events, the fact that she was credibly overwhelmed by these circumstances prevented that in the first instance.⁵

Closure of petitioner's RUFA is therefore contrary to the applicable regulations and the Board is required to reverse. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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⁵ It should be emphasized again that at hearing petitioner's VR case manager appeared willing to find good cause if the symptoms claimed by petitioner's spouse could be found accurate to her satisfaction, suggesting no question as to *petitioner's* response to these circumstances. While the case manager would not accept a letter from his mental health social worker, the hearing officer found the testimony on his condition credible and buttressed by the documentation from his social worker and the letter submitted from a Board-certified registered nurse.