

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-09/14-952  
 )  
Appeal of )

INTRODUCTION

Petitioner appeals closure of his household's Reach Up Financial Assistance ("RUFA") by the Vermont Department for Children and Families ("Department") due to noncompliance with his work requirement. The following facts are adduced from a hearing held October 10, 2014 and a written submission from the Department filed October 27.

FINDINGS OF FACT

1. Petitioner receives RUFA and is in a household of four comprised of himself, his partner, and two minor children.

2. As a recipient of RUFA, petitioner is subject to a work requirement. As part of his Family Development Plan (FDP) signed in August of 2014, petitioner agreed to participate in a "Work Experience" placement "to learn the general skills, training, and knowledge needed to get and keep a job, establish a good work record and develop good work habits and skills."

3. According to his FDP, petitioner's Work Experience placement includes requirements to report on time and work all scheduled hours, make up any missed time to meet required hours per month, received approval for any absences, call his worksite in a "timely manner" if he is going to be late or absent, and "cooperate" with his supervisor and co-workers.

4. Petitioner was placed at a Subway shop as a "sandwich artist" to meet his work requirement, beginning July 18. He understood that if the placement was successful, it could result in a paying job.

5. During the months of July and August, petitioner was absent and late to the worksite on numerous occasions. He generally made this time up by working other shifts.

6. On August 29, he had a meeting with his supervisor during which she informed him that, had he been a paid employee, she would have let him go already due to his lack of reliability. She informed him he would be let go if he missed any time in the following three weeks.

7. On September 17, petitioner called his supervisor to tell her he would be unable to come in that day, because he had injured his back. His supervisor told him that if he did not come in, his placement would be terminated. His supervisor reported that petitioner was angry, impolite, and

swore at her during this phone conversation. Petitioner acknowledges that it was an angry discussion but alleges his supervisor was unprofessional during the call.

8. Petitioner then left his home to report to the worksite. In the interim his supervisor decided to terminate his placement whether or not he came in that day. Petitioner was verbally informed that he had been terminated when he arrived.

9. Petitioner's supervisor summarized the reasons for his termination in a letter dated the same day, listing the dates that he had been late or absent and culminating with a description of the last phone conversation prior to the termination.

10. Petitioner contacted his case worker on September 19 to explain why he had lost his placement, stating that he was not able to come in that day because of a back injury. His case worker informed him this was not a "good cause" reason, in that he lost his placement for a variety of reasons, primarily lack of reliability.

11. Petitioner was mailed a notice dated September 19 that his RUFA would terminate effective October 15 for failing, without good cause, to comply with his Reach Up requirements.

12. At hearing, petitioner submitted a letter from a medical clinic dated September 22 indicating that he was seen on the same date for a back injury and recommending that he avoid "strenuous activity such as heavy lifting, pulling or pushing" and a box for "work" checked off.

13. Petitioner has received 60 or more months of countable RUFA.<sup>1</sup>

14. Petitioner is receiving continuing benefits pending appeal. The week following his loss of the Subway placement, he began a new work placement at a different site.

ORDER

The Department's decision is affirmed.

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 in receipt of 60 or more cumulative months of assistance is noncompliant with

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<sup>1</sup> At hearing, petitioner questioned whether he had reached this limit. However, he stipulates in his FDP that he has reached the "lifetime limit" of benefits. In addition, the Department provided a summary of the time periods that he or his household has received RUFA, adding up to more than 60 months.

program requirements. See Reach Up Rules § 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.").<sup>2</sup>

RUFA regulations provide that "each participating adult" must comply with the service component and work requirement:

A family in which a participating adult has received 60 or more countable, cumulative months of Reach Up financial assistance or cash assistance funded by a TANF block grant in another state, shall be ineligible for assistance under the Reach Up program, unless each participating adult is fully complying with Reach Up services component requirements and:

1. The participant is deferred from his or her work requirement for one of the reasons listed in rules 2363, 2363.1, or 2363.2;
2. The participant is engaged in a community service placement and, if necessary, any additional countable work activities for the number of hours equal to the work requirement; or
3. The participant is employed and, if necessary, engaged in any additional countable work activities for the number of hours equal to the work requirement.

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<sup>2</sup> Per this regulation, failure to meet a work requirement mandates closure with or without good cause. However, the Department has adopted procedures which appear to allow a recipient to reapply immediately following the date of closure of benefits if good cause is found for failing to comply with the work requirement. See Bulletin 14-12, P-2349, p.3 (eff. 5/1/14). This would potentially result in a shorter period of closure if an applicant meets initial eligibility requirements. See Bulletin 14-12, P-2201 (eff. 5/1/14).

Reach Up Rules § 2238(A).

Reach Up regulations specify "work activities" as "the activities that participants must engage in to fulfill their work requirement." Reach Up Services Rules § 2350.

Petitioner's work requirement is comprised of his "Work Experience" placement. See Reach Up Services Rules § 2350.4. Additionally, his FDP specifies the expectations for successfully participating in the placement.

There is no dispute petitioner failed to maintain his Work Experience placement for the week at issue. Petitioner argues that his back injury constitutes good cause for the loss of his placement. Petitioner's medical evidence does not directly address any limitations as to his role as a "sandwich artist" as it only places limits on what appear to be more strenuous activities. Even assuming the medical evidence sufficiently addresses his specific work tasks, petitioner does not generally dispute the list of issues cited by his jobsite supervisor for his termination. This evidence otherwise demonstrates that he was asked to leave for reasons beyond and independent of his request to be absent on September 17. Moreover, petitioner's work record did not meet the specific expectations outlined in his FDP.

In these respects he failed to meet his work requirement as alleged by the Department and has not demonstrated good cause for this failure.<sup>3</sup>

The Department's closure of his RUFA is therefore consistent with the applicable regulations and the Board is required to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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<sup>3</sup> The Department argues that the Board should apply an "abuse of discretion" standard with respect to Departmental review of petitioner's loss of his placement, as the Department here in essence is relying on the decision and discretion of a third party (the Subway supervisor) in finding that he failed to meet his work requirement. It is not necessary to reach this question as the facts and reasons for petitioner's loss of his placement are not materially in dispute, and his conduct at any Work Experience placement is specifically covered by his FDP.