

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County PORTAGE	District Hearings Section CANTON	Assistance Group Name		Assistance Group Number
Place of Hearing PORTAGE CDHS	Initial Hearing Date 11/13/2002	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Gladys Tasker, employment service counselor

Date Notice Mailed 09/11/2002	Date Received by Local Agency	Date Received by ODHS 10/09/2002	Date Appeal Summary Received	Date Scheduling Notice Mailed 11/01/2002
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Appeal Number(s)/Program(s) 1088917/OWF, 1088918/PAF
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Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CANTON District hearing section at 1-800-686-1569.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE SECTION

Ohio Works First (OWF), Appeal No. 1088917

On 09/11/2002, the Portage County Department of Job and Family Services (CDJFS), also known as the agency, notified the appellant they were proposing to terminate the appellant's OWF, for a second tier sanction. The agency proposed the sanction because the appellant failed, without good cause, to follow all the provisions in her self-sufficiency contract. The issue on appeal is whether the appellant failed to follow all the provisions of her self-sufficiency contract and whether the agency's action to impose a second sanction was correct. The hearing officer finds from the facts and policy that the agency's action was incorrect.

Food Stamp program, Appeal No. 1088918

On 09/11/2002, the Portage County Department of Job and Family Services (CDJFS), also known as the agency, notified the appellant they were proposing to reduce the appellant's portion of her assistance group's

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Appeal(s) SUSTAINED 1088917, 1088918	Date Issued 01/08/2003	Compliance 1088917, 1088918
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Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

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(AG) food stamp allotment from \$213.00 to \$139.00, for a second tier sanction, effective 10/01/2002. The agency proposed the sanction because the appellant failed, without good cause, to follow all the provisions in her self-sufficiency contract. The issue on appeal is whether the appellant failed to follow all the provisions of her self-sufficiency contract and whether the agency's action to impose a second tier sanction was correct. The hearing officer finds from the facts and policy that the agency's action was incorrect.

PROCEDURAL MATTERS

On 10/07/2002, the appellant requested a state hearing and the Bureau of State hearing received it on 10/09/2002. The state hearing was initially scheduled for 10/29/2002; however, the appellant requested to reschedule her state hearing. The state hearing was then rescheduled for and conducted on 11/13/2002. The hearing officer held the record open, until 11/15/2002, for the appellant to submit her exhibits. The hearing officer received the appellant's exhibits and forwarded the copies of the exhibits to the agency.

SUMMARY OF THE PROCEEDINGS

Agency Testimony:

The agency representative (AR) stated the appellant appeared for a face to face interview, on 08/05/2002, for a reapplication and reassessment where the appellant signed a self-sufficiency contract and plan. The AR stated she also provided child care information to the appellant at the time of the reapplication. The AR stated at the interview, the appellant alleged having seizures which effected her memory and therefore she could not work; however, the appellant did not present any medical verification of seizures. The AR stated they provided the appellant with a Basic Medical form (ODJFS 7105) to have the appellant's medical provider complete the form. The AR testified that they are instructed to assign client's to WEP sites if they do not have medical verification with them at the time of assessment.

The AR testified that in the self-sufficiency plan, the agency assigned the appellant to a drug and alcohol assessment, on 08/08/2002 which she attended, and to have her medical provider complete the Basic Medical form. The AR stated from the self-sufficiency plan (SSP), the agency assigned the appellant to a work experience program (WEP) at Kent Social Services from 08/19/2002 to 10/31/2002 for a total of thirty (30) per week. The AR stated the appellant stated her seizures occurred during her sleep and the appellant stated she thought she could do the WEP assignment. The AR stated she told the appellant they could always change the WEP assignment.

The AR stated the agency received the appellant's completed Basic Medical form on 08/15/2002 and it indicates the appellant's medical provider indicated is unemployable for twelve (12) months or more; however, because there are no details regarding her limitations and parts of the form were not completed, the agency determined the appellant should attend her WEP assignment. The AR stated she called the appellant on 08/15/2002 about the appellant's Basic Medical because the agency needed to obtain a release from the

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appellant in order to speak to the appellant's medical provider. The AR stated she was questioning the limitations.

The AR stated the appellant failed to appear for her WEP assignment on 08/19/2002, which is her failure date, and on 08/27/2002 the agency received notice from the WEP site that the appellant did not appear for the WEP and did not call. The AR testified that she called and left two messages, on 09/03/02 and 09/10/02, for the appellant. The AR stated on 10/03/2002, the appellant called the agency about the sanction and its imposition. The AR stated she asked the appellant why she did not appear at the WEP site and why it took so long for the appellant to call the agency and the appellant stated she was out of town with friend.

In response to the hearing officer, the AR stated she could not provide a time period for the first sanction nor when the first sanction was cured. In response to the hearing officer, the AR stated the appellant did not mention she was taking prescription medication. In response to the hearing officer's question about the agency's "good cause" policy and the appellant's medical condition, the AR stated that "illness of the participant" is a good cause reason for exempting an individual from a WEP activity. In response to the hearing officer, there are two individuals in the AG, the appellant and her daughter. The AR stated they do not have any medical documents concerning the appellant.

In response to the hearing officer, the AR stated the provisions of the self sufficiency contract which the appellant failed to adhere to are, following instructions and rules at the assigned work site unless the CDJFS determines "good cause" exists and performing all work activities as prescribed in the appellant's self-sufficiency plan.

Appellant Testimony:

In response to the hearing officer, the appellant did receive the notifications concerning the termination of the OWF and the reduction of the food stamps. The appellant stated the AR told her she had to go to the WEP site or she would not receive the food stamps and the AR had her withdraw her state hearing request otherwise they would not issue food stamps. The appellant stated she told the agency she had seizures, a bad memory and asthma. The appellant stated she tried to go to the WEP site; however, she had four seizures in a row and could not attend the WEP assignment. The appellant stated she does not leave home without her older daughter. The appellant stated she cannot stoop or bend. The appellant stated she signed a medical release form in order for her doctor to forward her medical information to the agency. The appellant stated her doctor's office faxed the letter to the agency on 08/15/2002 and she has the evidence to prove it. The appellant's daughter stated her fiance has faxed the doctor's letter to the agency on two occasions. The appellant stated the letter is dated 06/11/2002 from her doctor which states the appellant has severe seizures, severe bronchial asthma, depression and is his opinion she is unable to work.

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In response to the hearing officer, the appellant stated when her doctor forwarded the completed the Basic Medical form indicating she was unemployable to the agency, she believed she was exempt from the WEP site. The appellant stated what lead her to believe this was from her conversation with the AR back on 08/05/2002. In response to the hearing officer, the appellant stated she keeps asking the agency to show her when she was previously sanctioned and they cannot show me.

FINDINGS OF FACT

(1) There are two individuals in the appellant's OWF and food stamp assistance group (AG), the appellant and her 3 1/2 year old daughter.

(2) On 08/05/2002, the appellant reapplied for the OWF, food stamps and Medicaid and signed a self-sufficiency contract and plan. In the contract, the appellant agreed to follow all the provisions of the self-contract, including following instructions and rules at the assigned work site unless the CDJFS determines "good cause" exists and performing all work activities as prescribed in the appellant's self-sufficiency plan.

(3) On 08/05/2002, at the appraisal, the agency indicated in the appellant's self-sufficiency plan that the appellant should see her medical provider on 08/08/2002 and have him complete the Basic Medical form. And on 08/19/2002, should begin participating in the assigned WEP site at Kent Social Services.

(4) On 08/15/2002, the agency received the completed Basic Medical form, from the appellant's medical provider, indicating she was unemployable and the doctor expected the medical condition to last 12 months or more.

(5) On 08/15/2002, the appellant's doctor's office faxed a letter, dated 06/15/2002, from the appellant's doctor to the agency regarding the appellant's medical conditions (severe seizures, severe bronchial asthma, depression). The appellant presented this document, as her evidence, at the time of the state hearing.

(6) The agency did not show documentation to show that a previous sanction was imposed due to a first failure to comply with the self-sufficiency contract.

(7) The appellant did not appear at the WEP site, the fail date was 08/19/2002.

(8) On 09/11/2002, the agency notified the appellant they were proposing to terminate the appellant's OWF and remove the appellant from the food stamp assistance group for a second failure to comply with the terms of the appellant's self-sufficiency contract. And on the same day, the agency notified the appellant they were proposing to reduce the appellant's portion of her assistance group's (AG) food stamp allotment from

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\$213.00 to \$139.00, for a second tier sanction, effective 10/01/2002.

(9) On 10/07/2002, the appellant requested a state hearing.

CONCLUSIONS OF POLICY

Policy

OWF

Ohio Revised Code (ORC) 5107.42, states that except as provided in divisions (B) and (C) of this section, the County Department of Human Services shall assign each adult participating in OWF to one or more **work activities** (emphasis added) and developmental activities. Under (B) of the rule, it states that if a CDJFS determines a client has a temporary or permanent barrier to participation in a work activity, it may assign the client to one or more alternate work activities instead of assigning the client to one or more work activities or developmental activities.

O.R.C. 5107 .14 states that an assistance group is ineligible to participate in Ohio Works First unless the minor head of household or each adult member of the assistance group, no later than thirty days after applying or undergoing a redetermination of eligibility for the program, enters into a written self-sufficiency contract with the County Department of Job and Family Services. The contract shall set forth the rights and responsibilities of the assistance group as applicants for participants of the program.

Ohio Administrative Code (OAC) 5101:1-3-15 outlines Ohio Works First (OWF) sanctions. According to (B) of this rule, failure to comply with provision(s) contained in the self-sufficiency contract, shall result in the imposition of a sanction.

O.R.C. 5107.16, pursuant to the rule, the Agency shall terminate or deny eligibility for OWF to an assistance group for one payment month or until the failure or the refusal ceases, whichever is longer, if a member of the assistance group refuses, without good cause, to comply in full with all provisions of the self-sufficiency contract.

ORC 5107.161 states that before a county department of job and family services (CDJFS) sanctions an assistance group, the CDJFS shall provide the assistance group written notice of the sanction. The written notice shall inform the assistance group that it may request a face -to-face meeting with the CDJFS not later than ten days after receiving the written notice to explain why the assistance group should not be sanctioned.

ORC 5107.41 states that as soon as possible after an assistance group submits an application to participate in OWF, the CDJFS shall schedule and conduct an appraisal of each member of the assistance group who is a required program participant. The Code provides that the appraisal may include an evaluation of the

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employment, educational, physiological and psychological abilities or liabilities or both of the OWF participant. The rule also states that if the participant claims to have a medically determinable physiological or psychological impairment, illness or disability, the county department may require that the participant undergo an independent medical or psychological examination.

Food Stamp

OAC 5101:4-3-09 outlines the Food Stamp policy concerning requirements and responsibilities under the Ohio Works First (OWF) program.

OAC 5101:4-3-09 (A) states that the following provisions apply to the OWF, Food Stamp (FS) assistance groups (AG). The policy indicates that an OWF/FS assistance group are required to sign a self-sufficiency contract and self-sufficiency plan.

OAC 5101: 4-3-09 (D) indicates that failure by the individual, who is an adult or a minor head of household to comply with the provisions in the self-sufficiency contract shall result in the imposition of a sanction for that individual, as set forth in ORC 5107.16.(1) In this case, it is a first sanction of one month of benefits. Provisions contained within the self-sufficiency contract that could result in a sanction are: work activities, developmental work activities, or alternative work activities.

OAC 5101: 4-3-09 (I) explains that sanctioned individuals must demonstrate a willingness to comply as determined by the CDJFS with all the provisions of the self-sufficiency contract prior to restoration of benefits.

Agency Representative

OAC 5101:6-6-02 (A) states the agency representative presents and is the advocate for the agency's case at the state hearing. The agency representative shall explain the reasons for the agency's action, cite the regulations upon which the action was based, provide relevant case information and documents, and answer relevant questions from the appellant, appellant's authorized representative and the Hearing Officer. The agency representative has the same rights as the individual to confront and cross examine the appellant during the state hearing.

OAC 5101:16-7-01 (C) (1)(c) states that it is the responsibility of the agency to show, by the preponderance of the evidence, that its action or inaction was in accordance with the ODJFS rules.

Analysis

In the present case, on 08/05/2002, the appellant signed a self-sufficiency contract and plan agreeing to follow all the provisions of the self-contract. The appellant's self-sufficiency plan states that the appellant

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should see her medical provider on 08/08/2002 and have him complete the Basic Medical form and begin her assigned WEP site beginning 08/19/2002. On 08/15/2002, the agency received the completed Basic Medical form, from the appellant's medical provider, indicating she was unemployable and the doctor expected the medical condition to last 12 months or more. However, there is nothing in the plan from the agency indicating the appellant should not go to her WEP site on 08/19/2002, which is also the failure date. The appellant presented a letter, dated 06/15/2002, from her doctor regarding her medical conditions (severe seizures, severe bronchial asthma, depression)

The hearing officer finds from the agency's testimony concerning the "good cause" policy and from reviewing the agency's good cause policy that the agency allows for an excused absence when a client is ill and for illnesses beyond three days in any month, the agency may require medical verification. In reviewing the medical evidence the appellant has provided, i.e. a letter from her doctor indicating she has seizures, asthma and depression and the agency submitted a Basic Medical form indicating the appellant was unemployable for 12 months or more due to seizures, the hearing officer finds these documents indicate more of on-going medical condition rather than an illness. Under the OWF rules, the hearing officer finds from the ORC 5107.42 (B) that it states if a CDJFS determines a client has a temporary or permanent barrier to participation in a work activity, **it may assign the client to one or more alternate work activities** instead of assigning the client to one or more work activities or developmental activities. There are no rules for a medical condition which exempt an individual from an assignment.

According to the testimony, it is clear that the agency is willing to consider the appellant's limitations in their assessment and assignment, but at the time, they were unaware. Therefore, it appears that the sanction was correct at the time. However, because the appellant presented new medical information and the agency indicated that this could establish good cause, the sanction is no longer correct. Also, the hearing officer finds that the agency failed to show that a previous failure occurred and sanction period was served; therefore, a sanction for a second failure was not supported.

HEARING OFFICER'S RECOMMENDATIONS

Based on the record before me, I find the appeal- for OWF- should be sustained. 1088917

Based on the record before me, I find the appeal- for food stamps- should be sustained. 1088918

Based on the new information the appellant presented at the state hearing, the agency should redetermine whether the appellant meets any of the provisions of the agency's good cause policy. The agency should issue notice and provide her with appeal rights.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

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OWF and food stamp appeal sustained.

Compliance required.

O.A.C. 5101:6-7-03(B)(1)(a) requires compliance with decisions involving public assistance, social services or child support services, within fifteen calendar days from the date the decision is issued, but in no event later than ninety days from the date of the hearing request.

O.A.C. 5101:6-7-03(B)(1)(b) requires compliance with this decision within ten calendar days of the county's receipt of the decision. The county agency may take longer than ten days if it elects to make the decision effective in the assistance group's normal issuance cycle, provided that issuance will occur within sixty calendar days of the date of the hearing request.

APPENDIX

Agency's Exhibits:

- (1) Self-sufficiency contract and plan
- (2) Schedule for WEP site
- (3) Basic Medical signed by the DO. 08/15/2002
- (4) Appellant's letter to agency, 10/07/2002
- (5) Case Notes, CLRC, 7 pages
- (6) CDJFS' Good Cause policy
- (7) Conciliation process and Notice of Rights and Responsibilities, 2 pages

Appellant's Exhibits:

- (A) Letter from appellant's M.D., dated 06/11/2002
- (B) Fax cover sheet from the M.D.'s office, dated 08/15/2002

Date Issued: 01/08/2003