

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>GREENE</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>GREENE CDJFS</b>	Initial Hearing Date <b>11/09/2004</b>	Rescheduled Postponed to <b>12/14/2004</b>	Rescheduled Postponed to <b>12/14/2004</b>	Rescheduled Postponed to <b>12/14/2004</b>

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Kelly Rogers</b>

Date Notice Mailed <b>10/12/2004</b>	Date Received by Local Agency	Date Received by ODHS <b>10/19/2004</b>	Date Appeal Summary Received <b>11/08/2004</b>	Date Scheduling Notice Mailed <b>12/03/2004</b>
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Appeal Number(s)/Program(s) <b>1197268/OWF, 1197269/FS, 1197270/MED</b>
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### Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

**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 state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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

**Appeal Number 1197268 - OWF**

**Appeal Number 1197269 - Food Stamps**

**Appeal Number 1197270 - Medicaid**

By notice mailed 10/12/04, the Agency proposed a third occurrence sanction of Ohio Works First (OWF), food stamps, and Medicaid due to failure to participate in a Work Experience Program (WEP) assignment in September 2004 and October 2004. The issue of the hearing is whether the proposed sanction is in accordance with program regulations.

After careful consideration of the evidence, testimony, and applicable policy, I find that the Appellant failed to participate in her required WEP assignment. Although the determination of failure without good cause is correct, the Agency failed to establish that the failure was, in fact, a third occurrence; therefore, I recommend

JEV

Appeal(s) <b>SUSTAINED 1197268, 1197269, 1197270</b>	Date Issued <b>01/07/2005</b>	Compliance <b>1197268, 1197269, 1197270</b>
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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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that the appeals be sustained with compliance required.

### **PROCEDURAL MATTERS**

The request for a state hearing was received 10/19/04. The hearing was scheduled for 11/9/04. Per the Appellant's request, the hearing was rescheduled and was conducted on 12/14/04. Participating and testifying under oath were the Appellant and an Agency representative. An Appeal Summary was received 11/8/04. During the hearing, the record was left open until 12/23/04 for the Appellant to submit documentation of her daughter's dental surgery and/or documentation that her daughter did not attend school on 9/28/04 and for the Agency to submit documentation regarding the Appellant's first and second occurrence sanctions. Neither the Appellant nor the Agency submitted such documentation.

### **FINDINGS OF FACT**

#### **Undisputed Facts**

1. The assistance group consists of the Appellant and four children, all in receipt of OWF prior to the imposition of the sanction.
2. The Appellant signed a self-sufficiency contract on 9/9/04 and was assigned to participate in a WEP assignment twelve hours per week beginning 9/13/04. The Appellant was also assigned to continue her employment at least eighteen hours per week.
3. The Appellant did not have transportation for 9/13/04 and the Agency approved a revised start date of 9/14/04.
4. On 10/12/04, the Agency proposed to sanction OWF and food stamp benefits for the entire assistance group and to sanction the Appellant's Medicaid benefits effective 11/1/04 due to failure to participate in the WEP assignment in September 2004 and October 2004. A pre-termination review (PTR) for Medicaid was completed 10/11/04.
5. The Appellant did not report for her WEP assignment on 9/28/04, 10/5/04, 10/11/04, and 10/12/04 and did not support her reasons for failure to participate.
6. The Agency did not provide documentation to establish that this is the Appellant's third failure subject to sanction and was unable to testify as to the dates of previous failures. The Agency's standards of good cause were not submitted as evidence.

#### **Disputed Facts**

1. The Appellant testified that her daughter had dental surgery on 9/27/04 and that she needed to stay home with her daughter on 9/28/04 due to complications from the dental surgery. The verification submitted to the Agency states only that the child had an appointment; it does not specify the reason for the appointment or the need for any follow-up care. The hearing record was left open for the Appellant to submit additional documentation regarding this absence. No documentation was submitted. I find that the Appellant did not support her reason for the failure to participate on 9/28/04. The Appellant testified that she did not report to the Agency on 10/11/04 and 10/12/04

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because she had been made aware that a sanction was going to be imposed. I find that this does not constitute a good reason for failure to participate. The Appellant was unable to testify as to participation on 10/5/04; therefore, I find that the Appellant did not complete her WEP assignment on 10/5/04.

### CONCLUSIONS OF POLICY

An OWF assistance group is an assistance group in which all members are eligible for benefits under Title IV-A of the Social Security Act. For food stamp recipients who are members of an OWF assistance group, failure by an individual who is an adult or minor head of household to comply with provisions contained in the self-sufficiency contract, shall result in the imposition of a sanction for that individual as set forth in Ohio Rev. Code § 5107.16. Ohio Admin. Code § 5101:4-3-09 For a third or subsequent failure or refusal, the Agency shall deny or terminate the individual's eligibility to participate in the food stamp program for six benefit months or until the failure or refusal ceases, whichever is longer. Ohio Admin. Code § 5101:4-3-11 In regard to OWF benefits, for a third or subsequent failure or refusal, the Agency shall deny or terminate the assistance group's eligibility to participate in OWF for six payment months or until the failure or refusal ceases, whichever is longer. An adult eligible for medical assistance who is sanctioned for a third or subsequent failure or refusal, without good cause, to comply in full with a provision of a self-sufficiency contract related to work responsibilities loses eligibility for medical assistance. Ohio Rev. Code § 5107.16

When a state hearing is held regarding a sanction under Ohio Rev. Code § 5107.16, the hearing officer shall base the decision on the county department's standards of good cause for failure or refusal to comply in full with a provision of a self-sufficiency contract, if the county department provides the hearing officer a copy of the department's good cause standards. Ohio Rev. Code § 5107.16 (C)

The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing. It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with regulations. Ohio Admin. Code § 5101:6-7-01 (2003)

Here, the Appellant's assistance group is considered to be an OWF assistance group, therefore, the provisions of Ohio Rev. Code § 5107.16 must be applied. The Appellant was assigned to participate in a WEP assignment twelve hours per week beginning 9/13/04. The Agency's standards of good cause were not submitted. This decision finds, however, that the Appellant failed without good cause to participate in her WEP assignment on 9/28/04, 10/5/04, 10/11/04, and 10/12/04.

Because the Appellant did not complete her WEP assignment as required, I find the Agency's determination of failure without good cause to be correct. However, as the Agency failed to establish that this is a third occurrence failure, I cannot find the imposition of a third tier sanction to be correct.

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**HEARING OFFICER'S RECOMMENDATIONS**

Based on the record before me, I find that the appeal should be sustained with compliance ordered. The Agency is directed to establish the sanction as a first occurrence sanction.

**FINAL ADMINISTRATIVE DECISION AND ORDER**

Finding the hearing officer's decision to be supported by policy and the evidence, I adopt the hearing officer's recommendations. Thus, appeal numbers 1197268, 1197269, 1197270 are SUSTAINED. Compliance is required. Compliance with this state hearing decision is hereby required pursuant to Ohio Admin. Code § 5101:6-7-03 (2003).

**APPENDIX**

Agency Exhibits

1 - Appeal Summary and attachments

Appellant's Exhibits

None

Date Issued: 01/07/2005