

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5007237398	HAMILTON	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1437134	PAF	OVERRULED
1437135	OWF	OVERRULED
1437136	MED	SUSTAINED
Compliance Required		
Decision Date:	01/09/2009	
Request Date:	09/18/2008	
Hearing Officer:	PAUL STANISZEWSKI	

State Hearing Decision

ISSUE 1 (1437134): Food Stamps

ISSUE 2 (1437135): Ohio Works First (OWF)

ISSUE 3 (1437136): Medicaid

The Ohio Works First (OWF) cash assistance program requires that every adult member of an assistance group enter into a self-sufficiency contract (SSC) as a condition of eligibility. When there is a failure to comply in full with the terms agreed to in the self-sufficiency contract, a tiered sanction of benefits is imposed. For a third or subsequent failure, the sanction is six months or until compliance occurs, whichever is longer. First and Second SSC failures can also result in a sanction in the food stamps program and a third or subsequent failure can result in a sanction in the food stamp and Medicaid programs resulting in the removal of the person who caused the failure. When a state hearing is requested on a SSC failure, a determination must be made as to whether an individual failed, without good cause to comply in full with the provisions of the SSC and if so, whether the sanction is correct.

On 08/13/08, the agency proposed a sanction for a sixth failure to comply in full with the provisions of her SSC. This sanction included removing the appellant from the food stamp allotment, stopping OWF and removing the appellant from Medicaid. The Appellant disagrees with the sanction and requested a hearing.

After careful review of the facts and regulations that apply, I find the appellant did fail, without good cause, and because this is a sixth failure, the sanction period is also correct. While the sanction is correct with regard to food stamps and OWF, when the Agency terminates Medicaid for an individual, there must be a pre-termination review completed. Here, I am unable to find that this was completed prior to the removal of the appellant from Medicaid. Therefore, I recommend the OWF and food stamp appeals be overruled and the Medicaid appeal be sustained.

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PROCEDURAL MATTERS:

The HCDJFS mailed the notices to the address of record on 08/13/08. On 09/18/08, the Bureau of State Hearings received the State Hearing request.

The State Hearing was conducted on 11/18/08.

The agency representatives are Shannon O'Toole and John Rogers.

Deanna White, LAS and the appellant attended the State Hearing.

FINDINGS OF FACT:

1. The AGs consist of the twenty-six (26) year-old appellant and her four (4) children; ages 9, 7, 6, and 4.
2. All of the household members receive OWF, therefore, the Food Stamp assistance group is pure.
3. The assistance group received OWF and Food Stamps in 07/08.
4. She has served five (5) prior OWF work activity sanctions; from 04/01/02 through 05/16/02, from 08/01/03 through 12/16/03, from 04/01/04 through 11/03/04, from 10/01/06 through 03/31/07, and from 11/01/07 through 04/30/08.
5. She signed the Self Sufficiency Contract and Plan on 05/07/08 and 07/02/08, respectively.
6. Also on 07/02/08, she signed the Vocational Assessors form stating that her barriers had been addressed and that she was ready to participate in a 20-30 hour per week program.
7. Based on the assessment, Community Link determined that she is a mandatory work activity participant.
8. She was assigned to a Work Experience Program (WEP) beginning on 07/03/08 with no end date; the assignment is FLSA required.
9. She was to submit her attendance verification to Community Link on the 15th and last day of the month.
10. She was scheduled to attend twenty (20) hours per week, Monday through Friday from noon to 4 p.m.
11. The FLSA maximum participation hours are calculated as follows; \$593 (OWF) plus \$586 Food Stamps equals \$1179. The \$1179 divided by the \$7 (minimum wage) equals 168 hours per month. The 168 hours per month divided by 4.3 equals 39 maximum hours per week.
12. The assignment did not exceed the FLSA maximum participation hours.
13. Transportation was approved; she was given six (6) gas cards for 07/08.
14. It is undisputed that she did not attend the assignment from 07/07/08 through 07/31/08.
15. Community Link did not receive the attendance sheet on or before 7/15/08.
16. Community Link did not receive the attendance sheet on or before 7/31/08.
17. On 07/22/08, Community Link mailed a Failure Letter because it did not receive the attendance report from the appellant on the 15th.
18. On 07/28/08, the appellant received notice of the eviction from the Work Site Supervisor.
19. On 07/30/08, Community Link conducted a site visit to the WEP site.
20. During the site visit, the Work Site Supervisor reported to Community Link that the appellant did not attend in 07/08.
21. She lived at the address of record for the entire month of 07/08; the eviction did not occur in 07/08.
22. The Work Site Supervisor reported that the appellant and her children would be evicted in 08/08, due to the continuing poor care of her residence.

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23. There is no record of the appellant contacting Community Link in 07/08.
24. On 08/02/08, she moved out of the apartment and in with her Mom.
25. On 08/12/08, the agency applied the sanctions; the notices, with hearing rights, were mailed to the appellant on 08/13/08.
26. On 08/27/08, the appellant contacted the agency to report that her rent increased by \$10; there is no reference to being evicted.
27. On 09/03/08, the agency completed a Medicaid Pre-Termination Review (PTR).

POLICY:

Ohio Admin. Code § 5101:4-3-09 Food Stamp: Ohio Works First (OWF) appraisal, self sufficiency contract requirements, and sanctions. (7CFR273.7)

- (A) The following provisions apply to OWF food stamp AGs...
- (B) ...The county agency shall apply this rule if the person was receiving OWF benefits at the time the sanction or disqualification in the OWF program was imposed...
- (J) ...Failure by an individual who is an adult or a minor head of household to comply with the provisions contained in the self-sufficiency contract, as set forth in Section 5107.14 of the Revised Code, shall result in the imposition of a sanction for that individual as set forth in Section 5107.16 of the Revised Code...
- (S) ...The length of the sanction or disqualification period shall not exceed the OWF sanction or disqualification period...

Effective Date: 11/01/03

Ohio Admin. Code § 5101: 4-3-11 (7CFR273.7)

(G) Work requirements

No physically and mentally fit individual over the age of fifteen and under the age of sixty shall be eligible to participate in the food stamp program if the individual:

- (1) Refuses, at the time of application and every twelve months thereafter, to register for employment in a manner prescribed in paragraph (C) of this rule;
- (2) Refuses without good cause to participate in an employment and training program to the extent required by the county agency;
- (3) Refuses without good cause to accept an offer of employment, at a site or plant not subject to a strike or lockout at the time of the refusal, at a wage not less than the higher of:
 - (a) The applicable federal or state minimum wage; or,
 - (b) Eighty per cent of the wage that would have governed had the Minimum hourly wage under section 6(A)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (a)(1)) been applicable to the offer of employment;
- (4) Refuses without good cause to provide a county agency with sufficient information to allow the county agency to determine the employment status of or the job availability of the individual; or
- (5) Voluntarily and without good cause: quits a job of thirty or more hours a week; or reduces work effort and, after the reduction, the individual is working less than thirty hours per week. If the individual reduces his or her work hours to less than thirty a week, but continues to earn weekly wages that exceed the federal minimum wage multiplied by thirty hours, the individual remains exempt from program work requirements in accordance with paragraph (A)(9) of this rule; or,
- (6) Refuses without good cause to participate in a workfare program.

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- (7) Failure or refusal to work register or complete the appraisal process by a required individual will result in ineligibility of the individual. An individual who fails or refuses without good cause any of the other aforementioned work requirements shall be subject to the sanction process as provided for in this rule.
- (H) ...If an individual becomes ineligible to participate in the food stamp program under the work requirements as set forth in paragraph (G) of this rule...the individual shall become ineligible to participate in the food stamp program as follows...
- (1) If an individual becomes ineligible to participate in the food stamp program under the work requirements as set forth in paragraph (G) of this rule, with the exception of work registration and appraisal, the individual shall become ineligible to participate in the food stamp program as follows:
- (b) ...For a third failure or refusal, the county department shall deny or terminate the individual's eligibility to participate in the food stamp program for six benefit months...

Effective Date: 01/06/03

Ohio Rev. Code § 5107.16 Ohio Works First

- (A) If a member of an assistance fails or refuses to, without Good Cause, to comply in full with a provision of a self-sufficiency contract entered into under Section 5107:14 of the Revised Code, a county department shall sanction the assistance group as follows:
- (3) For a third or more failure or refusal, the county department shall deny or terminate the assistance group's eligibility to participate in Ohio Works First for six months...

Effective Date: 07/01/00

Ohio Admin. Code §5101:1-3-15.1 Transition of Ohio Works First (OWF) assistance groups under sanctions and penalties. [CAMTL 32](#)

- (A) Conflict with Revised Code
- (2) ...The county department of job and family services (CDJFS) shall administer the work activity programs in accordance with the requirements contained in this rule and not in accordance with section 5107.16 of the Revised Code.
- (3) All applicable requirements contained in the Revised Code section referenced in paragraph (A)(2) of this rule have been incorporated in this rule...

Effective Date: December 29, 2006

Ohio Admin. Code §5101:1-3-12 Good Cause

(G) ...The Agency must terminate an assistance group's OWF eligibility if they fail or refuse, without good cause to comply with their self-sufficiency contract. Ohio law gives ten good cause reasons:

- illness or the participant or a family member
- medical appointment
- appearance in court
- appointment with a social services agency or program
- death in the family
- worksite closure due to weather or emergency
- lack of child care
- Agency failure to provide supportive services
- Agency failure to provide all necessary information about the assignment

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- other absences excused at the discretion of the director of the Agency
 - (H)(4) The Agency may request verification of good cause. The Agency should apply “a reasonableness standard” both in deciding what verification is needed and for the time frame given to supply verification...
 - (K) ...The Agency must make sure that assignment hours in the Work Experience Program (WEP) and community service meet the requirements of Fair Labor Standards Act (FLSA). In other words, they must ensure that the Appellant’s benefits average minimum wage. The Agency should look at the total amount of benefits (OWF and Food Stamps) and divide by the federal minimum wage to determine the number of hours an OWF participant should complete...29 U.S.C. 201 (05/00), et seq.
- Effective Date: 9-29-06

Ohio Administrative Code (OAC) Section 5101:1-38-011

- (1) ...When it appears to the CDHS that an assistance group or individual with the assistance group may no longer be eligible for Medicaid under their current category of assistance, the CDHS is required to complete a ... PTR of continuing Medicaid eligibility for the assistance group (AG) and for each individual’s Medicaid eligibility under every other category of Medicaid before proposing an adverse action for that AG or individual...
- Effective Date: 08/01/03

ANALYSIS:

In this case, the appellant has served five (5) prior work activity sanctions; from 04/01/02 through 5/16/02, from 08/01/03 through 12/16/03, from 04/01/04 through 11/03/04, from 10/01/06 through 03/31/07, and from 11/01/07 through 04/30/08.

There was no dispute that the appellant is a mandatory work activity participant and that she did not complete the WEP assignment in 07/08. Therefore, based on the SSC she agreed to and the plan, she failed to comply with the terms of the SSC.

The appellant and her representative argue that she has good cause for her 07/08 failure. The appellant and her representative allege that she went to the WEP assignment on 07/03/08, that she was told that she didn’t need to come back to participate until later in the month because the Work Site Supervisor was leaving on vacation. Also, she was informed that she would be evicted from her apartment. Late in the month, she was told by her neighbor that the Supervisor had returned from her vacation. Based on the information provided by the neighbor, she went to the work site and tried to participate in her activity. The Supervisor told her that she could not participate because she did not attend her assignment earlier in the month. The appellant further argues that she called Community Link for three (3) weeks to report that she was being evicted.

The LAS representative submitted a call log to establish that it is possible for Community Link to receive a call, but still not enter it in to the call log. However, based on the evidence provided, I find it reasonable that the appellant was aware of the work activity requirements and the sanction process because she has previously served five (5) work activity sanctions.

Regarding the Supervisor’s alleged vacation, there is nothing in the record that establishes that the Work Site closed or that the Supervisor did not have a person covering for her while she was

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on vacation. In fact, the only way that the neighbor could have known that the Supervisor returned from the vacation is if the neighbor was attending her assignment and was present when the Supervisor returned to the Work Site.

With regard to the eviction, although the appellant alleges that she received notice of the eviction early in the month, there is nothing in the record to support her allegation. She did not submit a copy of the eviction notice in to the hearing record and there is no report of the eviction in the Case Notes. In fact, the Supervisor reported to Community Link that she did not give the eviction notice to the appellant until 07/28/08 and the record shows that she did not out of the apartment until 08/02/08.

Construing the rules liberally, I find that she established Good Cause from 07/28/08 through 07/31/08, based on the notice of the eviction. With regard to her attempts to call Community Link, the appellant did not provide the specific dates and/or times as to when she allegedly called to establish Good Cause. It should be noted that there are no record of the alleged calls in the Community Link Case Notes or in the Running Record Comments. However, assuming that she made the calls, she knew from prior experience that she needed to contact Community Link as soon as possible to establish Good Cause for any non-participation. If she was unable to reach a representative by phone, it would have been reasonable for her to go to Community Link to report the problem in person. Since the appellant was not attending her assignment, she could have gone in to Community Link on any day because her transportation was approved and she had received six (6) gas cards in 07/08.

In addition, the Self Sufficiency Plan that she signed and initialed required her to go to Community Link on 07/15/08 to submit her attendance form. It would have been reasonable for her to submit the form and to explain why she did not attend her assignment from 07/07/08 through 07/15/08. Therefore, the record indicates that she did not go in person to Community Link and that Community Link did not receive the attendance form from her on or before 07/15/08.

Based on the testimony, evidence and regulations that apply, I do not find good cause from 07/07/08 through 07/25/08.

According to the regulations that apply, when there is a third or subsequent work activity failure to comply with the SSC, an individual is removed from Medicaid. However, prior to removal the agency is required to complete a pre-termination review. Here, the agency erred by removing the appellant prior to completing the pre-termination review.

HEARING OFFICER'S RECOMMENDATIONS:

Based on the record before me, I recommend the OWF and food stamp appeals be overruled. Based on the record before me, I recommend the Medicaid appeal be sustained with compliance. To comply, the agency should reinstated Medicaid for the period of time prior to completion of the pre-termination review. Since the pre-termination review was completed on 9/30/08, she was eligible for Medicaid through the month of October. Therefore, the agency should ensure that Medicaid eligibility is reflected in CRIS-E and MMIS through October 31, 2008.

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FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the Hearing Officer's recommendations to be supported by the evidence, the recommendations are adopted.

The Medicaid appeal is sustained with compliance required.

The Ohio Works First and food stamp appeals are overruled.

Ohio Admin. Code § 5101:6-7-03(B)(1)(a) requires compliance 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 for those decisions involving public assistance...

Hearing Authority

January 9, 2009

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 CINCINNATI District hearing section at 1-866-635-3748.

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, Bureau of State Hearings, P.O. BOX 182825, Columbus, OH 43218-2825 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 Bureau of State Hearings 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.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

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Appendix

AGENCY EXHIBITS:

- A. Appeal Summary (1 p)
- B. Self Sufficiency Contract and Good Cause Statement (4 p)
- C. Attendance Notice (1 p)
- D. Individual Demographics Screen (1 p)
- E. Ineligibility Data Screens (7 p)
- F. Notice History Detail Screens (3 p)
- G. Cash Issuance History (1 p)
- H. Food Stamp Issuance Screen (1 p)
- I. Running Record Comments (1 p)
- J. Community Link Packet (18 p)
- K. Case Information Screens (2 p)
- L. Additional Running Record Comments (6 p)
- M. Request for WEP Participant and WEB Site Information forms (2 p)
- N. Child Care Screen (1 p)

APPELLANT EXHIBITS:

- 1. State Hearing Request (1 p)
- 2. LAS Phone Log (4 p)