

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County MAHONING	District Hearings Section CLEVELAND	Assistance Group Name		Assistance Group Number
Place of Hearing MAHONING CDHS	Initial Hearing Date 12/03/1999	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Sherry McKelvey-sup. Rose Sahyoun-wkr.

Date Notice Mailed 12/30/1899	Date Received by Local Agency 11/02/1999	Date Received by ODHS 11/05/1999	Date Appeal Summary Received	Date Scheduling Notice Mailed 11/19/1999
Appeal Number(s)/Program(s) 9927446/OWF				

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 Human Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CLEVELAND District hearing section at 1-800-686-1551.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423. 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:

Whether the agency extended sanction of appellant's OWF case beyond the minimum one month sanction period and whether such alleged action was proper.

FINDING OF FACT:

Agency Testimony:

The agency supervisor is not the supervisor of record. Appellant is a caretaker in an OWF household. A hearing decision was rendered on 12/15/98 that overruled appellant's objection to a proposed OWF sanction. Benefits were continuing due to a timely hearing request. Upon receipt of the 12/15/98 hearing decision, the agency failed to impose the sanction and appellant continued to receive benefits. In 9/99 the agency realized the action to sanction had not yet been taken but, before imposing the

DMZ

Appeal(s) SUSTAINED 9927446	Date Issue 02/15/2000	Compliance 9927446
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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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sanction, the agency required that appellant be examined at St. Elizabeth's Hospital for a work capacity evaluation. The decision to do this was based upon appellant's contention of physical inability to perform work due to her medical condition. Appellant complied with the agency's request and was evaluated by staff at St. Elizabeth's on 9/24/99. Before the agency received the evaluation from St. Elizabeth's, appellant's case was sanctioned, resulting in termination of OWF cash beginning 10/1/99.

The evaluation from St. Elizabeth's determined that appellant could perform sedentary work in addition to receiving physical therapy. Appellant was then assessed by the agency on 11/18/99 and assigned to CWEP at the local CDHS beginning on 11/23/99. The agency supervisor states that cash benefits will not be reinstated until appellant performs a combination of 130 hours of CWEP and her Physical Therapy monthly .

Appellant Testimony:

Appellant's representative (AR) disagrees with imposition of the sanction beyond the minimal one month period. He (AR) also disagrees with the agency's refusal to allow him access to appellant's record; specifically, AR was denied access to the evaluation made by St. Elizabeth's. The agency supervisor states that she was told by the agency hearing officer that, as the evaluation was not part of the appeal summary, the representative has no right to view the document.

Appellant's representative states that appellant complied with the requirements of the department when she appeared for the evaluation. The agency was incorrect to continue the sanction beyond the one month when, in fact, they had not determined what would constitute cooperation on appellant's part as the agency was not yet in receipt of the evaluation by St. Elizabeth's Hospital. The subsequent decision to assign to CWEP and physical therapy would be a second requirement beyond what was required of appellant in order to establish cooperation.

Appellant's representative presents exhibit B which is a statement from appellant's physician that states that appellant

"...has been under my care for Charcat-Marie-Tooth disease, which is a disease that causes nerve damage to the legs. The patient goes for physical therapy three times a week. She is also under my care for anxiety/depression, asthma and sinusitis. It would cause the patient great stress and strain to work and go to physical therapy simultaneously."

AR also presented exhibit C, a statement from the appellant's physical therapist, confirming the physical therapy and that, appellant wears bilateral foot braces and uses a can for ambulation. Appellant's AR maintains that appellant's physical condition should afford her an alternative assignment other than work as ruled out by appellant's physician.

EXHIBITS:

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- A-12/15/98 hearing decision
- B-Physician's statement
- C-Physical Therapist's statement

CONCLUSIONS OF FACT:

A hearing decision rendered on 12/15/99 upheld the agency's original proposal to sanction appellant's case for failure to cooperate with the self sufficiency contract. The agency delayed, never imposing the sanction until 10/1/99. In the meantime, the agency determined that the appropriate course of action was to have appellant evaluated for fitness for employment due to her contention of medical restrictions.

One month after the sanction action of 10/99, after receipt of the evaluation by St. Elizabeth Hospital, appellant was assessed by the agency on 11/18/99 and the agency then decided that an assignment was still appropriate. Appellant was assigned, beginning on 11/23/99, to perform both CWEP activities at the local CDHS and appellant's physical therapy for a combination of 130 hours monthly.

The hearing officer finds that, beyond the initial, required evaluation at St. Elizabeth's in 9/99, no additional cooperation requirement was put to appellant. It was not until 11/23/99, that agency imposed additional requirements which, if met, would constitute compliance. By this time, appellant had served the required, minimum, one month's sanction, 10/99, and completed the evaluation at St. Elizabeth's, 9/24/99. As no additional cooperation requirement had been established or set by the agency, the appellant's actions demonstrate substantial compliance with the requirements initially set by the agency. By imposing additional compliance requirements after the original sanction had been served, the agency, in effect, has extended the first occurrence sanction beyond the period which is supported by rule.

The hearing officer finds therefore, the appellant substantially met compliance requirements 10/31/99 (end of the one month minimum sanction period) and the agency, incorrectly, continued the sanction period.

CONCLUSIONS OF POLICY:

ORC 5107.16 states that if a member of an assistance group fails or refuses without good cause, to comply in full with a provision of a self sufficiency contract entered into under section 5107.17 of the

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Revised Code, a county department shall sanction the assistance group as follows: (1) for a first failure or refusal, the county department shall deny or terminate the assistance group's eligibility to participate in OWF for one payment month or until the failure or refusal ceases, whichever is longer.

In this case, the 12/15/98 hearing decision authorized the agency to sanction appellant's case. Such sanction occurred for the month of 10/99. To demonstrate compliance, appellant was required to be evaluated by St. Elizabeth's Hospital and was so evaluated. That evaluation was the extent of the cooperation required of appellant for the purpose of reinstatement of benefits. To continue the sanction, was outside the boundaries of the requirements for the first occurrence sanction; in addition, no decision had yet been made by the agency as to what (additional) compliance requirement(s) were to be put to the appellant. Appellant's benefits should have been reinstated for 11/99, since appellant had complied with the evaluation requirement. In view of the evaluation, appellant should have been assigned accordingly. If appellant failed to cooperate with the next assignment, it would have been appropriate for the agency to propose a second level sanction .

Appellant's representative raises the issue of the suitability of a work assignment in light of appellant's physician's opinion. Revised Code 5107.42(B) states that "County departments shall establish standards for determining whether a minor head of household or adult has a temporary or permanent barrier to participating in a work activity."

This section continues at paragraph (D) to state that "A county department may reassign a minor head of household or adult when the county department determines reassignment will aid the assistance group in achieving self sufficiency and personal responsibility and shall make reassignments when circumstances requiring reassignment occur, including when a temporary barrier to participating in a work activity is eliminated."

Appellant presents documentation that her medical condition may be compromised by participating in a work activity. While the agency has determined that appellant can complete physical therapy and continue to work per the evaluation by St. Elizabeth, there was no evidence presented to support such a determination. The medical evidence presented by the appellant is found to prevail in this argument; the medical documentation supports that a work assignment and (my emphasis) physical therapy, that is, the two activities together, are counter indicated .

HEARING OFFICER'S RECOMMENDATIONS:

The hearing officer recommends that the appeal be sustained. Appellant is found to have substantially

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cooperated with the agency in attending the evaluation for medical fitness for work activity. Cash benefits, if the appellant is otherwise eligible) should be reinstated to the month after appellant served the one month minimum requirement for a first occurrence sanction (10/99). Therefore benefits should begin 11/99 and ongoing.

With respect to appropriateness of a WEP assignment, appellant is found to have presented medical evidence that a WEP assignment may compromise appellant's condition while appellant is undergoing physical therapy. The agency should therefore determine and reassign appellant from a work activity to one that "will aid the assistance group in achieving self sufficiency and personal responsibility" as detailed in ORC 5107.42.

Written notice concerning the agency's determinations here and the right to a state hearing should be provided to the appellant and to her representative.

FINAL ADMINISTRATIVE DECISION AND ORDER:

The Hearing Officer's recommendations are adopted.

Appeal # 9927446 is SUSTAINED - COMPLIANCE IS REQUIRED

O.A.C. Section 5101: 6-7-03 requires prompt compliance with state hearing decisions. For decisions involving public assistance, compliance shall be achieved within 15 calendar days from the date the decision is issued, but in no event later than 90 calendar days from the date of the hearing request. Compliance shall be promptly reported to the Bureau of State Hearings, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

Date Issued: 02/15/2000