

IN THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS

ADMINISTRATIVE APPEAL SECTION

IN RE APPEAL OF:

DOCKET NO.	2006-AA-0132
APPEAL NO(S).	1261515 / FS
AG NO. HEARING REQUEST DATE:	12/02/2005
HEARING DECISION DATE:	01/23/2006 / MEM
APPEAL REQUEST DATE:	02/07/2006
AGENCY:	Lucas CDJFS

Administrative Appeal Decision

The Appellant requests an administrative appeal of the state hearing decision issued on January 23, 2006. The state hearing decision overruled the Appellant's appeal, finding that the Agency appropriately removed from the from her assigned Work Experience Program (WEP) site and place her in an alternative WEP site at the request of the initial WEP site supervisor. The Appellant submitted an administrative appeal request with seventeen assignments of error. The Appellant's arguments center on whether the removal of the Appellant from the assigned work site was subject to the requirements of the state hearing process, including prior notice and the right to appeal and whether the Agency complied with the Food Stamp Employment And Training (FSET) Conciliation Process as set forth in Ohio Admin. Code 5101:4-3-38.

1. FACTS

On 09/16/05 the Appellant signed an employability contract and plan agreeing to participate in the Work Experience Program (WEP) for 29 hours per month to meet her work requirement. The Appellant was assigned to complete her hours at Toledo Area Ministries beginning October 2005. On 10/07/05 the job site manager asked that the Appellant be removed from the work site. The Agency received information that the Appellant failed to attend the site as assigned and the Agency proposed a sanction of the Appellant's food stamp benefits. The Appellant appealed the sanction. On 11/14/05 the Appellant withdrew her appeal with the understanding that the sanction was to be voided and food stamp benefits reinstated. The Appellant appealed the dismissal of her state hearing pursuant to the withdrawal. The 12/12/05 administrative appeal decision affirmed the dismissal, but found the Appellant was entitled to a new state hearing regarding the agency's performance of its part of the withdrawal agreement. In compliance with the state hearing withdrawal, the Agency had voided the sanction, restored the Appellant's food stamp benefits and assigned the Appellant to a new WEP Site.

2. THE RIGHT TO PRIOR NOTICE AND CONTINUED PLACEMENT

The Appellant disagrees with her removal from the Toledo Area Ministries and placement in a new site. She believes she has the right to prior notice of her removal from Toledo Area Ministries and the right to continue assignment there until the issue was resolved through a state hearing.

Ohio Admin. Code 5101:6-2-04 requires prior notice of adverse action “when the agency intends to withhold, reduce, suspend, or terminate public assistance, social services, or food stamps within the certification period, or to change the manner or form of assistance to protective, vendor, or two-party payment. The change in Appellant’s assignment was not a proposal to “to withhold, reduce, suspend, or terminate” her food stamps. The Appellant did receive the appropriate notice when the Agency initially proposed to sanction her food stamp benefits. That action, however, is a proposal to terminate food stamps and specifically requires prior notice. As to the change in assignments, the Appellant is not entitled to either prior notice under Ohio Admin. Code 5101:6-2-04, nor continued placement in the assignment under Ohio Admin. Code 5101:6-4-01.

3. NOTICE OF THE RIGHT TO A STATE HEARING AND TO THE CONCILIATION PROCESS

The Appellant argues that she was not informed of her right to request a state hearing or to access the FSET conciliation process. As the state hearing officer noted in the state hearing decision, the Appellant’s employability contract and plan specifically state:

You have a right to an Appeal of any LCDJFS action on your case by asking for a **State Hearing** with the Ohio Department of Job and Family Services. . . .

You have the right to file a conciliation request.

The Appellant had notice of her rights as required by Ohio Admin. Code 5101:4-3-30 and 5101:4-3-38.

4. THE RIGHT TO A STATE HEARING

The dismissal of the Appellant’s initial hearing request was affirmed by the first administrative appeal. The case was sent back to the Toledo Hearings Supervisor, however, to schedule a new state hearing regarding the Agency’s performance of its part of the withdrawal agreement. The Appellant requested a hearing regarding her change in work site. The state hearing officer addressed that issue in the state hearing decision and found that the change in work site was

correct, given the written request by the job site supervisor to have the Appellant removed. The Appellant received her right to a state hearing.

5. THE RIGHT TO THE CONCILIATION PROCESS

The Appellant claims that she was denied the right to the conciliation process. The hearing officer found that the Appellant never requested a conciliation hearing because there was no written request. Ohio Admin. Code 5101:4-3-38 states that the conciliation process may be initiated by:

- (1) A written notice from the CDJFS to the participant for a conciliation conference; or
- (2) A written or verbal request from the participant to the CDFJS for a conciliation conference; or
- (3) A written or verbal request from the participant to the CDJFS for a conciliation conference when there is an act of nonparticipation. The conciliation process requires that such requests shall be made within seven calendar days which begins the day following the day of nonparticipation.

The Appellant testified that she called the Agency and requested a meeting, but that no one would talk to her about the change in assignment. The Appellant's verbal request for a meeting should have been considered a verbal request for a conciliation meeting, requiring the process afforded in Ohio Admin. Code 5101:4-3-38. If the Appellant still desires to have a conciliation conference regarding her WEP assignment, the Agency should convene a formal conciliation conference to meet with the Appellant. The Agency and the Appellant should attempt to informally resolve differences¹ The Agency shall issue a written decision regarding the outcome of the conciliation conference.

DECISION

Accordingly we must ORDER that:

1. The hearing decision be AFFIRMED, but COMPLIANCE issue to the Agency to offer the Appellant a conciliation conference to address on-going issues with her WEP assignment. The Agency shall comply with all requirements of Ohio Admin. Code 5101:4-3-38 if a conciliation conference is convened.

¹ Ohio Admin. Code 5101:4-3-38(H)

2. The agency is directed to send the Appellant written notice of the action taken as a result of this decision via an ODJFS 4074, 4065, 7334, 7401, 4701 or other appropriate state form. The agency is to attach a copy of this notice to the ODJFS 4068 State Hearing Compliance form. The Appellant retains all state hearing rights regarding any future agency determination.



Margaret Adams
Administrative Appeal Officer

CONCUR:



Robert J. Frankart
Administrative Appeal Officer



Chris Barley, Attorney-at-Law
Chief Administrative Hearing Officer

DATE OF ISSUANCE February 22, 2006

This Administrative Appeal decision is the final decision on this appeal from the state department of job & family services. It is binding on the department and agency, unless it is reversed or modified on appeal to the court of common pleas.

An Appellant who disagrees with this decision may appeal it to the court of common pleas pursuant to sections 119.12 and 5101.35(E) of the Revised Code. The Appellant shall mail a notice of appeal to the department at the following address:

**Ohio Department of Job & Family Services
Office of Legal Services
30 E. Broad Street, 31st Floor
Columbus, OH 43215-3414**

The Appellant must also file the notice of appeal with the court of common pleas in the county in which the Appellant resides (Franklin County, if the Appellant does not reside in Ohio). Please note: Both the mailing to the department and the filing with the court must occur within thirty (30) calendar days of the date of issuance of this decision.

If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc: Director, Lucas County Department of Job and Family Services
Hearings Supervisor, MEM, Bureau of State Hearings
Donna Tonkin, Wanda Ellis
Appellant