

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5073432162	GUERNSEY	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1381138	OWF	SUSTAINED
1381603	FS	OVERRULED
1381604	MED	OVERRULED
No Compliance Required		
Decision Date:	01/31/2008	
Request Date:	11/06/2007	
Hearing Officer:	ELIZABETH FOSTER	

State Hearing Decision

ISSUE SECTION:

1. Termination of employment without just cause as set forth in section 5107.26 of the Revised Code results in the imposition of a six-month period of ineligibility for Ohio Works First (OWF). By notice mailed on 11-6-07, the Guernsey County Department of Job and Family Services (Agency) proposed to place a six-month penalty on the Appellant's OWF benefits for a job quit or termination. After consideration of the testimony and evidence provided at the state hearing in conjunction with the applicable policy, I found that the Agency's action was incorrect. Thus, I recommend that Appeal Number 1381138 (OWF) be sustained.

2. The Appellant also requested a state hearing in the Food Stamps (FS) program. After consideration of the testimony and evidence provided at the state hearing in conjunction with the applicable policy, I found that there was no FS issue ripe for appeal at this state hearing. The Agency had not proposed any adverse action to the FS benefits for this case. Thus, I recommend that Appeal Number 1381603 (FS) be overruled.

3. The Appellant also requested a state hearing in the Medicaid program. After consideration of the testimony and evidence provided at the state hearing in conjunction with the applicable policy, I found that there was no Medicaid issue ripe for appeal at this state hearing. The Agency had not proposed any adverse action to the Medicaid benefits for this case. Thus, I recommend that Appeal Number 1381604 (MED) be overruled.

PROCEDURAL MATTERS:

1. The Appellant's oral request for state hearing was received by the Ohio Department of Job and Family Services (ODJFS), Bureau of State Hearings on 11-8-07.
2. The state hearing was scheduled to be heard on 11-26-07. The state hearing was rescheduled and heard as a video conference as per the Appellant's request on 1-8-08.
3. All witnesses were sworn in by the Hearing Officer.
4. The Agency prepared and presented an appeal summary which was received by the Hearing Officer on 11-21-07. The Appellant presented no documentation to the Hearing Officer at the

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time of the state hearing. All documentation received by the Hearing Officer was reviewed and entered into the hearing record in its entirety.

5. The Appellant represented herself at the state hearing. She was assisted by her mother. The Agency was represented by Tammy Glidden.

FINDINGS OF FACT:

1. The household consisted of the Appellant, age 21, and her 2-year old minor child. (2 persons)

2. The OWF, FS and Medicaid assistance groups consisted of both household members in receipt of benefits through the Agency.

3. The Agency has proposed no adverse action to the household's Medicaid or FS benefits. Neither party offered any additional testimony regarding these programs.

4. On 8-16-07, the Appellant signed a self-sufficiency contract (SSC) and self-sufficiency plan (SSP) at the Agency offices. (Exhibit C) Under "Other responsibilities and penalties," Exhibit C states as follows (Exhibit C-7):

I understand that: If I terminate employment without just cause or cause my own termination, I will not receive cash assistance for my entire family for six months and I may receive less food stamps. This provision also applies to recipients of Transitional Medicaid and transitional child care benefits who apply for OWF cash benefits.

5. On 10-9-07, the Appellant began work at Cambridge Cleaners (Employer). The Appellant reported this employment to the Agency on or about 10-22-07.

6. On 10-24-07, the Appellant was fired from her employment at Cambridge Cleaners.

7. On an undetermined date following 10-24-07, the Employer called the Appellant in to the work site to return her keys and to fill in for another employee who was absent. The Appellant did return the keys to the Employer, but did not work.

8. On 11-5-07, the Appellant reported that she had lost her job at the Employer to the Agency. The Agency confirmed the lost employment by phone and proposed a "job quit" penalty to begin on 11-1-07. The notice for this action was mailed to the Appellant on 11-6-07. (Exhibit G)

9. The OWF assistance group receives fair hearing benefits due to a state hearing request received within the prior notice period.

CONCLUSIONS OF POLICY:

Policy & Analysis

The central issue for this state hearing was whether the Agency's proposal to place a penalty for job quit on the Appellant's OWF benefits was correct. In the OWF program, "Termination of employment without just cause as set forth in section 5107.26 of the Revised Code results in the imposition of a six month period of ineligibility for OWF. For OWF participants, the six month period begins the month after the month in which employment is terminated. For transitional medicaid or transitional child care participants, the six month period begins the month in which

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the employment is terminated.”¹ Likewise, the Ohio Revised Code explains that “each member of an assistance group participating in Ohio works first is ineligible to participate in the program for six payment months if a county department of job and family services determines that a member of the assistance group terminated the member’s employment” without “just cause” as defined by rule.² “Just cause” reasons include the following: discrimination (defined); unsuitable employment; pay which less than the federal minimum wage; documented risk to individual’s health or safety; the work site is subject to a strike or lock-out’ documented illness of the member or recipient or of another assistance group member of the member or recipient requiring the presence of the member or recipient; documented household emergency; lack of adequate child care for children of the member or recipient who are under six years of age.³

The rules as cited provide that the Agency may impose a “job quit” penalty when it determines that a member of the OWF assistance group terminated his/her employment without just cause which is defined by rule. The Appellant did not argue that any of the “just cause” reasons applied to her case, rather, she argued that she did not willfully terminate or quit the employment. She testified that she was fired. This was the same information that the employer apparently confirmed in a phone conversation with the Agency. The Agency Representative countered that because the Appellant was fired she, in essence, caused her own termination. This is the language in the Agency’s Exhibit C-7. I found that that this interpretation of the rule goes beyond the plain language of the underlying rule which states that in order for a penalty to be placed, the job quit or termination action must be initiated by the OWF recipient, not the employer. In the present case, the facts established at the state hearing showed that the Employer fired the Appellant. This action was not taken by the Appellant, but rather by the Employer. I found that a “job quit” penalty was not appropriate for the Appellant’s case and this appeal should be sustained.

The Appellant also requested a state hearing in the FS and Medicaid programs. The facts established at the state hearing showed that the Agency has proposed no adverse action for these programs. I found that there were no FS or Medicaid issues ripe for appeal at this state hearing.⁴ “If it is discovered at the hearing that the request or issue meets one of the denial criteria in rule 5101:6-5-03 of the Administrative Code, the decision shall overrule the appeal on that basis.”⁵ Both the FS and medicaid appeals should be overruled.

HEARING OFFICER'S RECOMMENDATIONS:

Based on the record before me, I find that Appeal Number 1381138 (OWF) should be sustained. The Agency should void its action to place a “job quit” penalty on the OWF benefits for this case, effective 11-1-07. Because the OWF assistance group receives fair hearing benefits, there is no order of compliance to the Agency.

Based on the record before me, I find that Appeal Numbers 1381603 (FS) and 1381604 (MED) should be overruled.

¹ Ohio Admin. Code § 5101:1-3-14(B)(3)(a) (2006)

² Ohio Rev. Code § 5107.26(B) (2005)

³ Ohio Rev. Code § 5107.26(C) (2005)

⁴ Ohio Admin. Code § 5101:6-3-01(A) (2004)

⁵ Ohio Admin. Code § 5101:6-7-01(C)(3) (2006)

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FINAL ADMINISTRATIVE DECISION AND ORDER:

Since I find the Hearing Officer's recommendations to be supported by the policy and the evidence, I hereby adopt the recommendations. Thus, the Ohio Works First appeal is sustained. Because the OWF assistance group receives fair hearing benefits, there is no order of compliance to the Agency. The Food Stamps and Medicaid appeals are overruled.

Hearing Authority

January 31, 2008

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 COLUMBUS 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.

Appendix

Appellant Exhibits:

1. State hearing request (1 page inclusive)

Agency Exhibits:

- A. Appeal Summary (JFS Form 04067) (1 page inclusive)
- B. Appeal Narrative (1 page inclusive)
- C. Appellant's self-sufficiency plan and contract signed on 8-16-07 (9 pages inclusive)
- D. "Childcare and Transportation arrangements while participating for OWF" signed on 8-16-07 (1 page inclusive)
- E. "Ohio Works First Worker Responsibilities" signed on 8-16-07 (1 page inclusive)
- F. Partial OAC sec. 5101:1-3-14 (2006) (2 pages inclusive)
- G. "Notice History Detail" for ADCR 01 notice mailed on 11-6-07 (1 page inclusive)
- H. "Notice History Reason Code Screen" (1 page inclusive)
- I. "Cash Issuance History" (1 page inclusive)