

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County HAMILTON	District Hearings Section CINCINNATI	Assistance Group Name		Assistance Group Number
Place of Hearing HAMILTON CDJFS	Initial Hearing Date 02/13/2001	Rescheduled Postponed to 02/27/2001	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation None

Date Notice Mailed 01/16/2001	Date Received by Local Agency	Date Received by ODHS 01/29/2001	Date Appeal Summary Received	Date Scheduling Notice Mailed 02/16/2001
Appeal Number(s)/Program(s) 1004225/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 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 1-800-686-1571.

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 43266-0423 or FAX (614) 752-8298. 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: On 1-12-01, the Hamilton County Department of Job and Family Services (HCDJFS) proposed to terminate OWF, effective 1-31-01, due to a sanction for noncompliance with the work program. [Appeal #1004225]

The issue of this appeal is whether the agency's action was correct. The state hearing decision finds that the circumstances that occurred are unknown because the agency representative failed to attend the hearing. There is no evidence that indicates the appellant did not have good cause for noncompliance with the work program, and thus no evidence that sanction is warranted.

For the above reasons, the proposed termination of OWF cannot be affirmed.

PROCEDURAL MATTERS

SMW

Appeal(s) SUSTAINED 1004225	Date Issued 03/02/2001	Compliance 1004225
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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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By notice issued on 1-16-01 regarding the above action, a hearing request was received on 1-29-01 by the Bureau of State Hearings, and on 2-2-01 by the Cincinnati Hearings Section.

A hearing was scheduled for 2-13-01, but rescheduled to 2-27-01 at the appellant's request.

SUMMARY OF THE PROCEEDINGS

Agency's Testimony:

None

[Despite notification to agency personnel, neither the caseworker nor the supervisor attended the hearing.]

Appellant's Testimony:

The appellant was assessed for the work program and assigned to GED classes at the YWCA. Her caseworker, Ms. C., told the appellant that someone at the GED program would help her with her learning disability.

The appellant went to the GED class, but was told by someone there that she needed one-on-one instruction, that the YWCA did not have a program for her. The appellant called her caseworker and told her what had happened. The caseworker said she would find somewhere else for the appellant to go. The appellant did not return to the YWCA after that.

Subsequently, the appellant received notice saying she was being sanctioned [OWF terminated] for not attending GED classes.

FINDINGS OF FACT

1. On 1-12-01, the agency proposed to terminate OWF effective 1-31-01, due to the appellant's failure, without good cause, to comply with the work program. By notice issued on 1-16-01, a state hearing was requested on 1-29-01. As the request was timely, no action has been taken yet.
2. Per a hearing convened on 2-27-01, the hearing officer finds that the circumstances of the case are unknown because the agency representative failed to attend the hearing. The appellant's unrefuted

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testimony indicates that she went to the GED program to which she was assigned, but was turned away because they were unable to meet her special needs. There is no evidence that indicates the appellant did not have good cause for noncompliance with the work program. Lacking said evidence, the agency failed to prove that sanction is warranted.

3. Based on the foregoing reasons, the proposal to terminate OWF cannot be affirmed.

CONCLUSIONS OF POLICY

1. As set forth in Ohio Administrative Code (OAC) Rule 5101:6-6-02 (B), the agency representative presents and is the advocate for the agency's case at the hearing. This person shall explain the reasons for the agency's action, cite the regulations upon which the action is based, provide relevant case information and documents, and answer relevant questions from the individual and the hearing officer...

2. In accordance with OAC Rule 5101:6-7-01 (C), (1), the hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties as described in rule 5101:6-6-02 of the Administrative Code.

(c) It shall be the responsibility of the agency to show, by a preponderance of evidence, that its action or inaction was in accordance with the ODHS rules.

Analysis

Testimony and evidence submitted at the hearing reveal that the agency proposed to terminate OWF, effective 1-31-01, due to a sanction for noncompliance with the work program.

As indicated in the Findings of Fact, the circumstances that occurred are unknown because the agency representative did not attend the hearing. There was no testimony or evidence submitted that indicates the appellant did not have good cause for noncompliance with the work program. Lacking said evidence, the agency failed to prove that sanction is warranted.

Per the aforementioned reasons, and in accordance with the regulations cited herein, the proposal to terminate OWF cannot be affirmed.

HEARING OFFICER'S RECOMMENDATIONS

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Appeal #1004225 should be **SUSTAINED**. The agency should withdraw the 1-12-01 proposal to terminate OWF. Further, the agency should remove the sanction from the case record and process benefits accordingly, with appropriate notice.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendations shown above are adopted. Appeal #1004225 is SUSTAINED.

COMPLIANCE REQUIRED

Ohio Administrative Code Rule 5101:6-7-03 requires compliance with this decision within 15 calendar days from the date it is issued, but in no event later than 90 calendar days from the date of the hearing request.

Exhibits

None

Date Issued: 03/02/2001