

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

ADMINISTRATIVE APPEAL SECTION

In Re Appeal of:

Docket Number:	AA-2383	
Appeal No(s)	1395896	FS
	1395897	OWF
AG No.	5026537232	
Hearing Request Date:	01/29/2008	
Hearing Decision Date:	02/22/2008 / JLH	
Appeal Request Date:	03/03/2008	
Agency:	MARION CDJFS	

Administrative Appeal Decision

The appellant requests an administrative appeal of the state hearing decision issued on February 22, 2008. The state hearing decision overruled the appellant's appeals, finding that the Marion County Department of Job and Family Services appropriately proposed a first occurrence sanction of the appellant's Ohio Works First and food stamp benefits for failure to comply with the self-sufficiency contract.

The assistance group consists of the appellant, her husband and their minor children. The appellant and her husband signed a self-sufficiency contract on November 29, 2007. The husband was assigned to Tri-River Career Transitions classes beginning December 3, 2007. The husband missed class on January 8, 2008. The Agency proposed a first occurrence sanction on January 16, 2008. The husband continued with his assignment. He completed the remaining assigned classes and was to complete all homework and turn it in by January 25th, prior to his exit interview on January 28th. On January 25th, the husband came to the classroom for approximately two hours to complete his homework. He failed, however, to bring in his job search sheets at that time. The husband requested that his exit interview be rescheduled because his wife was having a cyst removed. Because his exit interview was being rescheduled for the 29th, the work site agreed that he could submit the job search forms on January 28th. The husband failed to return the forms on January 28th, but brought them on January 29th to his exit interview, along with good cause documentation for his absence on January 8th. The Agency worker agreed to withdraw the sanction proposed on January 16th. However, when the class site would not accept the job search sheets

because they were late, the Agency stated that the assistance group would be sanctioned on that basis. The husband became angry and verbally abusive. A supplemental sanction notice was sent on January 29th for the January 28th failure date.

The Agency initially proposed a first occurrence sanction on January 16, 2008 based on the failure to attend class on January 8th. Ohio Admin. Code 5101:1-3-15(B)(6) provides, "Subsequent failures to comply with provision(s) in the self sufficiency contract that occur up until the imposition of the sanction are considered the same occurrence." The sanction proposed on January 16th was not rescinded until January 29th. The January 28th failure, therefore, is considered part of the sanction that was initially proposed and cannot form the basis of a new sanction

Additionally, however, it does not appear that a sanction is appropriate in this case. The January 28th exit interview was rescheduled because the appellant was undergoing a medical procedure and the appellant and her husband could not attend the appointment. It would appear that this may constitute good cause for the husband's failure to turn in his job searches on January 28th. Ultimately, however, the husband attended all the assigned career classes, finished the assigned homework and completed the required job searches. The husband's only failure was in turning in the job searches one day late. In a self-sufficiency contract, as with any contract, "The general rule is, that one who seeks to recover on a contract must show substantial performance on his part...But slight omissions and inadvertences should be disregarded. Where there has been an honest effort by the contractor to perform, and not a willful omission, substantial performance is all that is required."¹ In this case the husband substantially performed on the contract, and the husband's delay in turning in the job searches should be considered a slight omission and not subject to a sanction. The sanction is not appropriate and the state hearing decision is reversed as to both OWF and food stamps.

DECISION

We therefore ORDER that the hearing decision is REVERSED and COMPLIANCE issue to the agency to rescind the sanction, restore lost benefits as appropriate. The agency is directed to send the appellant written notice of the action taken as a result of

1 *Ashley v. Henahan (1897), 56 Ohio St. 559, 47 N.E. 573, paragraph one of the syllabus.*

this decision via an ODJFS 4074, 4065, 7334, 7401 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.

Administrative Appeal Officer

CONCUR:

Administrative Appeal Officer

Chief Administrative Hearing Officer

Date of Issuance: March 18, 2008

Notice to Appellant

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 the original 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 a copy of 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, MARION CDJFS
LEHMAS01, HORNJ, Bureau of State Hearings