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RE:
Appeals 1441319

County Review Decision
Docket No. CR-3621

We have been appointed pursuant to OAC 5101:6-8-02 to review your request for a County Review Decision regarding the state hearing decision issued on February 27, 2009. The state hearing decision overruled the appellant's Ohio Works First (OWF), and Medicaid appeals, finding that the Agency appropriately denied the appellant's application because the appellant failed to attend the scheduled face-to-face interview. The state hearing decision, however, sustained the food assistance appeal, finding that, while the appellant failed to attend the scheduled interview, she did not refuse to cooperate in the eligibility process. You indicate that the state hearing decision as to the food assistance issue is wrong because it is based on an incorrect application of law or rule.

The appellant submitted an application on August 28, 2008. A notice was mailed on August 29, 2008, scheduling a face-to-face interview for September 15, 2008. The appellant is homeless. The notice was sent to her parents' house, where the appellant regularly receives her mail. The mail was not returned to the Agency. The appellant did not attend the interview and states

she did not receive the scheduling notice. The Agency denied the application on September 30, 2008. The appellant appealed to a state hearing.

The hearing officer found that the appellant did receive the notice, and simply failed to appear. The hearing officer found that the appellant failed to cooperate in the application process and, pursuant to Ohio Admin. Code 5101:1-2-01 and Ohio Admin. Code 5101:1-38-01 and that the Agency correctly denied the application for OWF and Medicaid. The hearing officer found, however, that the food assistance denial was incorrect. Ohio Admin. Code 5101:4-2-07 requires face-to-face interviews following the receipt of a food assistance application. Paragraph (I) of the rule requires that if the appellant fails to appear at that interview, the county agency must notify the appellant that she missed the scheduled interview and that she is responsible for rescheduling a missed interview. The Agency presented no evidence that a notice was sent following the missed interview to inform the appellant of her responsibility of rescheduling the interview. The rule further provides, "If the AG contacts the county agency within the thirty day application processing period, the county agency must schedule a second interview. The county agency shall not deny an AG's application prior to the thirtieth day after application if the AG fails to appear for the first scheduled interview." The food assistance application can be denied if the appellant fails to appear for a scheduled interview within the thirty day time period, but the standard is much stricter than with the other programs. Paragraph (J) of that rule provides:

If the AG refuses to cooperate with the county agency in completing any part of the application process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the AG must be able to cooperate, but clearly demonstrate that it will not take the actions that it can take and which are required to complete the application process. For example, to be denied for refusal to cooperate, an AG must refuse to be interviewed, not merely fail to appear for the interview.

There is no question that the appellant failed to attend the scheduled interview, but there is no evidence that the appellant was refusing to attend the interview.

You argue that the logic in this case appears flawed and that the appellant could never be denied for failing to appear at a scheduled face-to-face

appointment. We disagree. The food assistance rule clearly requires a greater standard of proof than a mere “failure to cooperate.” That distinction is crucial with regard to the food assistance denial. The rule specifically states, “If there is any question as to whether the AG has merely failed to cooperate, as opposed to refused to cooperate, the AG shall not be denied, and the agency shall provide assistance in obtaining required verification.” To read the “refusal to cooperate” language as analogous to a “failure to cooperate” negates the clear intent of the rules. In this case, the Agency failed to send out appropriate notice of the missed interview as required by the rule. Providing evidence that the appellant had that additional opportunity to reschedule the interview, but chose not to, could establish that the appellant is refusing, not merely failing, to cooperate. The state hearing decision is correct.

Administrative Appeal Officer

CONCUR:

Administrative Appeal Officer

Chief Administrative Hearing Officer

Date of Issuance March 25, 2009

Please note that this decision is advisory only and cannot serve to change the outcome of the state hearing decision addressed by this review nor excuse the agency from complying with that decision. A copy of this review will be forwarded to all state hearing supervisors and the Bureau of State Hearings.

cc: PAUL STANISZEWSKI
WANDA ELLISSANDRA HOLLINGSWORTH
TERISA MONROE
Hearing Supervisor
Bureau of State Hearings

