

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>MORGAN</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>MORGAN CDHS</b>	Initial Hearing Date <b>02/08/2005</b>	Rescheduled Postponed to <b>03/03/2005</b>	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Ginger Bowen, Eligibility Specialist</b>

Date Notice Mailed <b>01/12/2005</b>	Date Received by Local Agency	Date Received by ODHS <b>01/19/2005</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>02/18/2005</b>
Appeal Number(s)/Program(s) <b>1211323/OWF</b>				

### Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

**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, Ohio 43218-2825 or FAX (614) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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 or your representative may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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 SECTION

**Appeal No.1211323 OWF:** On 1/12/05, the County Department of Job and Family Services (Agency) mailed the Appellant notice of a second occurrence Ohio Works First (OWF) sanction for failure to comply with the terms of her self-sufficiency contract. The penalty for a second occurrence failure is termination of the assistance group's (AG's) cash assistance for three months, or until compliance is achieved, whichever is longer. The specific failure was the Appellant's absence from her work experience program (WEP) assignments, without good cause, on 12/20/04, 12/28/04, 12/29/04 and 1/3/05. Although the Hearing Officer found good cause for the Appellant on 12/28 and 12/29/04, the evidence failed to establish good cause reasons for the Appellant's absences on 12/20/04 and 1/3/05. An Authorized Representative from Southeastern Ohio Legal Services (SEOL), challenged the Agency's assessment and assignment process, but the Hearing Officer found the Agency had followed the requirements of the Revised Code in respect to these matters. The Agency's action is correct.

GNB

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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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### **PROCEDURAL MATTERS**

This appeal was received by the Bureau of State Hearings on 1/19/05. The hearing was scheduled to be held at the Agency on 2/8/05, but was postponed at the request of SEOL and rescheduled for 3/3/05 and was duly held on that date. The Appellant attended the hearing and was represented by a Paralegal from SEOL. The Appellant was also accompanied by a friend, who did not offer testimony. The Agency was represented by an Eligibility Specialist (ES). The Hearing Officer conducted the proceeding by speaker telephone from the Columbus Regional Hearings Office. All parties were sworn in by the Hearing Officer. Testimony was taken and documents were accepted and identified as Exhibits. The record was held open until 3/17/05 for submission of a psychological evaluation. The evaluation was submitted to the Hearing Officer on 3/11/05. Material was submitted in rebuttal by the Agency on 3/16/05 and the record closed the following day. Based on the evidence presented, the Hearing Officer made the following findings of fact.

### **FINDINGS OF FACT**

- (1) This appeal involves a twenty-one year old single parent who lives with her daughter, her mother, and her boy friend.
- (2) The Appellant was under a first occurrence OWF sanction beginning 6/1/04. She signed a compliance agreement on 11/2/04 and completed her compliance activities on 11/24/04.
- (3) On 12/3/04, the Appellant signed a new Self-Sufficiency Contract, Self-Sufficiency Plan and Good Cause Policy statement.
- (4) On 12/3/04, the Appellant was assigned to 8 hours per week of job club activity and 6 hours per week of GED classes. She was also required to attend weekly appointments as scheduled by the Help Me Grow program and to cooperate with Social Security in pursuing her disability claim. The Appellant requested transportation services, but declined child care services as her mother was in the home and able to provide child care. When the Appellant left the Agency on 12/3/04, she was given a December schedule of her required activities.
- (5) The Appellant failed to attend job club on 12/20/04, 12/28/04, 12/29/04 and 12/30/04. She also failed to attend an appointment with the Help Me Grow program on 1/5/05.
- (6) The Agency granted the Appellant good cause for missing job club on 12/30/05 due to transportation problems.
- (7) The Agency declined to grant good cause for 12/20/04, 12/28/04, 12/29/04 and 1/3/05.

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(8) On 1/12/05, the Agency issued notice of a second occurrence OWF sanction.

## CONCLUSIONS OF POLICY

### Policy

(1) Section § 5107.14 (Anderson 2001) of the Ohio Revised Code (Ohio Rev.Code) requires that, as a condition of eligibility, OWF assistance groups (AGs) sign a self-sufficiency contract with the CDJFS. The self-sufficiency contract is required to include the AG's employability plan, work activities, developmental activities or alternate work activities; the AG's rights and responsibilities and the consequences of failure to satisfy those responsibilities; the county agency's responsibility to provide services to assist the AG in achieving self-sufficiency and procedures for assessing whether both parties' responsibilities are being met.

(2) Ohio Rev. Code § 5107.41 (Anderson 2000) states that "As soon as possible after an assistance group submits an application to participate in Ohio works first, the county department of job and family services that receives the application shall schedule and conduct an appraisal of each member of the assistance group who is a minor head of household or adult. The appraisal may include an evaluation of the employment, educational, physiological, and psychological abilities or liabilities, or both, of the minor head of household or adult. At the appraisal, the county department shall develop with the minor head of household or adult a plan for the assistance group to achieve the goal of self sufficiency and personal responsibility through unsubsidized employment within the time limit for participating in the Ohio works first program established by section 5107.18 of the Revised Code. The plan shall include assignments to one or more work activities, developmental activities, or alternative work activities in accordance with Section 5107.42 of the Revised Code . . . The county department shall conduct more appraisals of the minor head of household or adult at times the department determines."

(3) Ohio Rev. Code 5107.42 (Anderson's 2000), "Assignment to work, developmental or alternative activities; exemption; reassignments," states in paragraph (B) that "If a county determines that a minor head of household or adult has a temporary or permanent barrier to participation in a work activity, it may assign the minor head of household or adult to one or more alternative work activities, instead of assigning the minor head of household or adult to one or more work activities or developmental activities. A county may not assign more than twenty percent of minor heads of household and adults participating in Ohio works first to an alternative work activity."

(4) The Agency Good Cause policy identifies the following as good cause reasons for non-participation in work assignments: Illness of the participant or of a family member, if care by the participant is necessary. A "family member" is defined as an individual related by blood, marriage or adoption, who is living in the same household as the participant. Previously scheduled appointments for medical, dental, vision care or job

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interview, including subsequent interviews and/or testing requirements. Death in the immediate family. "Immediate family" is defined as spouse, parents, children, brother, sister, grandparent, grandchildren, mother/father-in-law, sister/brother-in-law, daughter/son-in-law, or legal guardian. Failure of the Agency to place an individual in an assignment. Lack of supportive services as listed in the self-sufficiency contract. However, good cause is not given if the individual has exhausted available support services or refuses services offered by the Agency. Other reasons at the discretion of the Agency Director or his designee. Verification requirements apply.

(5) Section § 5107.16 (C) (Anderson 2001) of the Ohio Rev.Code provides that "When a state hearing . . . is held regarding a sanction under this section, the hearing officer . . . shall base the decision in the hearing or appeal on the county department's standards of good cause for failure or refusal to comply with a provision of a self-sufficiency contract . . ."

(6) Section § 5107.16 (A) (2) (Anderson 2001) of the Ohio Rev.Code specifies that when a member of an AG has a second occurrence failure or refusal to comply, without good cause, with a provision of a self-sufficiency contract, the CDJFS shall deny or terminate the AG's eligibility to participate in the OWF program for three payment months or until the failure or refusal ceases, whichever is longer.

### **Analysis**

The Revised Code section cited above in item (5) directs that state hearing decisions on OWF appeals shall be based on the good cause policy of the county requesting the sanction. Once the county has met its burden of proof to show that the appellant has failed to comply with the terms of his or her self-sufficiency contract, the remaining task at the hearing is to clarify, and if possible to document, the appellant's reasons for failure to comply with the terms of the self-sufficiency contract. In writing a recommendation, the hearing officer's responsibility, if he finds the appellant to be credible, is to compare the reasons with the county's published good cause policy. If the county has correctly found that the appellant's reasons for failure do not meet the agency's definition of good cause, the appeal must be overruled. However, if the agency has taken a sanction for reasons which go beyond the requirements of the self-sufficiency contract or plan, or if the county has incorrectly failed to find good cause, the appeal can be sustained.

Of the five days of missed appointments, the Agency granted good cause for one day, 12/30/04, due to lack of transportation. There was some question as to the Agency's position on the day of 12/28/04. That day the Appellant claimed she was ill, and submitted two statements from her physician that she called to make an appointment because she felt ill, but then cancelled because she had no transportation to the Appointment. As the Appellant is known to have no automobile of her own, and the whereabouts of her boy friend on the 28th have not been established, good cause should be granted for that day. As regards 12/29/04, the Appellant said she still felt badly and her boy friend and mother, who provided her child care, were both

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coming down with the flu. Good cause should be granted for 12/29/04. The Hearing Officer appreciates that the physician's notes are of no value as verification, but as illness, and lack of child care for children under the age of six, are included in the county good cause policy, and as the period of absence was quite short, good cause seems appropriate for these days.

The Appellant claimed that she couldn't go to her 12/20/04 appointment because the Community Action agency vehicle did not show up to take her. This account is contradicted note and trip log completed by the Community Action driver and submitted into evidence by the Agency as Exhibit (15). The note states the Appellant was a no show; the trip log stated that the Appellant's boy friend was standing at a window of the house, and that the Appellant told the driver that he would take her to her appointment. In regard to the 1/3/05 appointment, the Appellant claimed that she hadn't received a schedule for the Help Me Grow after the beginning of the new year. She was unaware of the 1/3/05 appointment, the Appellant said. The ES countered that she had run off a January schedule for the Appellant and had mailed it to her in late December, so she had knowledge of the appointment. The Monday appointments are ongoing, the ES said, and have been scheduled for the same day each week since the Self-Sufficiency contract was signed in November. The Agency appeal summary included a copy of the schedule, Exhibit (11), showing the 1/3/05 appointment, and which contained a notation that it was mailed to the Appellant on 12/22/04. It was undisputed that the Appellant did not attend the 12/20/04 job club or the 1/3/05 Help Me Grow appointment. Written evidence introduced by the Agency contradicts the Appellant's testimony. The Hearing Officer did not find the Appellant's testimony in regard to these appointments to be credible. The Agency was correct not to find good cause for those absences.

The Paralegal questioned the ES about the Agency's assessment process, asking if the Agency had obtained the Appellant's school records, if they were aware of the Appellant's psychiatric hospitalization and family history. The ES answered no to the first two questions, but claimed some knowledge of the Appellant's family history and problems in prior work assignments. The Agency had previously referred the Appellant to an SSI Case Manager to assist her in applying for disability. The Paralegal asserted at the hearing and in letters in Exhibits (20) and (22) that the Agency's assessment was inadequate, that the Appellant is incapable of handling the kinds of assignments given to her by the Agency, and was "set up to fail." In her letter of 3/11/05, the Paralegal cited the ORC sections quoted above in items (2) and (3). The Revised Code section in item (2) states that the county Agency shall perform an assessment as quickly as possible and that the appraisal may include an evaluation of the employment, educational, physiological, and psychological abilities or liabilities. The rule also states that the county department shall conduct more appraisals of the minor head of household or adult at times the department determines. The section cited in item (3) states that, if a county determines that a participant has a temporary or permanent barrier to participation in a work activity, it may assign the minor head of household or adult to one or more alternative work activities, instead of assigning the minor head of household or adult to one or more work activities or developmental activities. In the

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present case, the Agency completed an assessment, Exhibit (9), on 12/3/04. The exact content of the assessment, and by whom the assessment is conducted, is left up to the county agency. The term "may," and the phrase "at times the department determines," clearly indicate that these are matters of discretion for the Agency. The assessment called for the Appellant to participate in job club activities and GED classes. In the psychological evaluation submitted by SEOL on 3/11/05, the examining psychologist, who diagnosed the Appellant as having Oppositional Defiant Disorder, stated that individuals with that diagnosis do poorly in traditional individual psychotherapy and ". . . are more likely to benefit from an instructional treatment approach conducted in a group setting. The instructional approach typically focuses on the development of skills such as setting a goal, taking steps toward a goal, understanding the benefits of listening to and cooperating with directives and coping with frustrations." It would be difficult to find a better description of the setting and functioning of a job club, the primary activity to which the Appellant was assigned. By way of rebuttal, the Agency provided letters from the job club and GED teachers, Exhibit (26). Both letters indicate that the Appellant was able to participate appropriately and performed well in the classroom setting. The problem was not that Appellant was inadequately assessed, or that she was unable to perform the assigned tasks; it was that she failed to maintain her attendance and that the reasons she failed to do so did not meet the criteria of the Agency's good cause policy.

### **HEARING OFFICER'S RECOMMENDATIONS**

**Appeal No.1211323 OWF:** Based on the record before me, I find the appeal should be overruled. The Appellant has failed to establish good cause for failure to comply with the terms of her Self-Sufficiency Contract.

### **FINAL ADMINISTRATIVE DECISION AND ORDER**

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

The Ohio Works First appeal is overruled.

### **APPENDIX**

#### **Exhibits**

- (1) E-mailed state hearing request.
- (2) Agency appeal summary, three pages.
- (3) OWF Self-Sufficiency Contract.
- (4) OWF Self-Sufficiency Plan.
- (5) County Good Cause Policy.
- (6) Compliance materials, eight pages.
- (7) Rights and Responsibilities statement.

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- (8) WEP no-show report.
- (9) OWF/FSET Appraisal.
- (10) Conciliation Process.
- (11) WEP activity Schedules, five pages.
- (12) Letter, from appellant?
- (13) Physician's note, dated 1/12/05.
- (14) Physician's note, dated 1/14/05.
- (15) Transportation note and log.
- (16) Hand written note of no-show at Help Me Grow, and WEP no-show report.
- (17) FS determination.
- (18) Five pages, CRIS-E (computer case record) screen-print, including: "Notice History Detail," "Notice History," "OWF Time Limits Benefits Inquiry" and "Ineligibility Screen.'
- (19) Appellant Exhibit: Authorization for SEOL to Represent.
- (20) Appellant Exhibit: SEOL correspondence regarding rescheduling of hearing.
- (21) Appellant Exhibit: Administrative Appeal.
- (22) Appellant Exhibit: Letter, dated 2/25/05, from Family Therapy practice.
- (23) Evaluation Team Report and school psychologist's report.
- (24) Three page letter, dated 3/11/05, from SEOL.
- (25) Six-page psychological evaluation dated 2/21/05.
- (26) Two-page letter from Agency with two one-page letters from Job Club and GED teachers.

Date Issued: 04/14/2005