

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

ADMINISTRATIVE APPEAL SECTION

In Re Appeal of:

Docket Number:	AA-2498	
Appeal No(s)	1396354	PAF
	1396355	OWF
AG No.	5069408523	
Hearing Request Date:	01/29/2008	
Hearing Decision Date:	03/21/2008 / TMD	
Appeal Request Date:	03/28/2008	
Agency:	WARREN CDJFS	

Administrative Appeal Decision

The appellant is appealing a January, 2008, agency decision to impose a third level sanction against her food stamp and Ohio Works First assistance due to her failure to comply with a December self sufficiency contract which required her to attend a Work Experience Program assignment for 20 hours per week beginning December 7th. The hearing officer overruled the appeal, finding the following:

The agency submitted attendance reports establishing that the appellant missed her assignment on 12-11-07, 12-12-07, 12-17-07, and 12-18-07. She made up one day, but there were still three failure days. The transit problem was only for two days in the month of failure. So even if the days without transportation (12-19-07, 1-26-07, and 12-31-07) were not counted, the appellant would have to establish good cause for the three missed days.

In her request for administrative appeal the appellant asserts a Statement of Error that the hearing decision is contrary to the weight of the evidence presented at the hearing that she did not miss 12-11-07 and made up for 12-12-07 on 12-13-07.

We note that the hearing officer acknowledged the make-up day for December 12th, and the appellant correctly noted that the agency's attendance record confirms her attendance for December 11th. That record indicates that the appellant called in sick December 17th and 18th, which is plausible considering she was in the late stage of a pregnancy at the time and also has another child, age 1. Moreover she documented a WIC appointment the morning of December 17th and also had an ongoing transit problem with the agency on which the hearing officer took extensive testimony and concluded that the "record shows that both sides contributed to the transit problem."

We agree with the hearing officer that an Ohio Works First participant is required to comply with a self sufficiency contract upon pain of sanction unless they have good cause.¹ But as with any contract, each party has interlocking duties and “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.”²

We hold that in this case the appellant substantially performed her self sufficiency contract in December, 2007.

DECISION

We therefore ORDER that the hearing decision is REVERSED and COMPLIANCE issue to the agency, to be satisfied upon documentation that it has rescinded the sanction and restored lost benefits, as appropriate.

The agency is directed to send the appellant written notice of the action taken as a result of 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: April 4, 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.

¹ ORC 5107.14, 5107.16

² *Ashley v. Henahan (1897)*, 56 Ohio St. 559, 47 N.E. 573, paragraph one of the syllabus.

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, WARREN CDJFS
CHASEE, DYEHOT, Bureau of State Hearings