



Rhode Island Executive Office of Health and Human Services
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Date: June 23, 2015

Docket # 15-778
Hearing Date 06/22/15

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency Rules and Regulations reference(s) were the matters before the hearing:

THE DHS RULES AND REGULATIONS MANUAL: RI Works

SECTION: 1406.50.10 Criteria for Hardship Extension to Time Limit

SECTION: 1412.25.05 Good Cause for Failure to Comply

The facts in your case, the Agency Rules and Regulations, and the complete administrative decision in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant) and Agency representatives: Carol McKiernan, William O'Donnell, and the Policy Unit.

Present at the hearing were: You Agency representative: Carol McKiernan.

ISSUE: Did the Agency correctly deny the appellant's Hardship application for non-compliance with work program?

DHS RULES AND REGULATIONS: Please see the attached APPENDIX for pertinent excerpts from the Department of Human Services Rules and Regulations.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:**The Agency representative testified that:**

- The appellant applied for hardship extension on March 27, 2015.
- She was given a copy of Hardship Rules and Regulations, which she signed.
- The supervisor reviewed the application.
- The supervisor determined that the appellant was not eligible for hardship and denied the application.
- A notice of denial was sent on March 27, 2015.
- The appellant signed an employment plan on March 27, 2015.
- The appellant had two prior instances of non-compliance with her employment plan without Good Cause.
- The appellant was closed on February 02, 2014 due to non-compliance with her employment plan. She did not comply with job search.
- Another instance of non-compliance was on December 15, 2014. The appellant did not show up for her orientation with South Shore Center and did not call. She was terminated from that program.
- The appellant was sent a notice that she was terminated from the program on December 23, 2014.
- The appellant never applied for a hardship due to incapacity.
- She did tell her social worker on October 24, 2014 that she was incapacitated and was provided with an appointment to bring in a C1B. (medical verification) The appellant was given ten days to return C1B.
- The Agency never received a C1B from the appellant.
- There is no evidence that the appellant was told she no longer had to participate in employment plan at South Shore Center.

The Appellant Testified:

- She was non-compliant two times.
- She did not become incapacitated again until September- October of 2014.
- Her doctor would not sign that she could not participate in employment plans.
- Her doctor stated that she did not have MS and therefore could participate.
- She was diagnosed in 2002. She was then told later that she did not have it.
- She still feels that she has MS and she has severe symptoms.
- She has not applied for SSI.
- She was told by DHS that she did not have to go to Job Search anymore.
- She never applied for a hardship due to incapacity.
- She did not tell the Agency about her illness until she was closed.
- No doctor will diagnose without proof on an MRI.

FINDINGS OF FACT:

- The appellant had reached her forty-eight month lifetime limit for RI WORKS.
- The appellant had been notified of the limit and what she would need to do to be eligible for a Hardship extension.
- The appellant had many Hardship Extensions.
- The appellant apply for a Hardship Extension on March 27, 2015.
- The appellant's Hardship Extension application was denied on March 27, 2015.
- The appellant did file a timely appeal received by the Agency on March 27, 2015.
- The hearing was scheduled for May 18, 2015.
- The appellant requested a reschedule to seek legal representation.
- The hearing was held June 22, 2015.

Conclusion:

The issue to be decided is whether the appellant met the criteria for the Hardship Extension.

A review of Agency Rules and Regulations reveals that on 7/1/09, when the Rhode Island Works time limits of twenty-four (24) months in any sixty (60) months, with a lifetime maximum of forty-eight (48) months, will apply to all applicants and recipients, closure will occur for any assistance unit, including those containing citizen children of non-citizen parents or legal permanent residents in the U.S. less than five years, which has received twenty-four (24) months in the preceding sixty (60) months or a lifetime total of forty-eight (48) months.

Further review of Agency policy reveals that the Department of Human Services "may exempt a family from the application of the lifetime time limit by reason of hardship; a hardship extension may be granted to a family if all other Rhode Island Works eligibility requirements are met, including re-determinations, and one of the following criteria applies; the recipient has a documented significant physical or mental incapacity and can document a pending application for SSI or SSDI and have submitted an application for or be active and making progress in his/her employment plan with the Office of Rehabilitation Services; or is caring for a significantly disabled family member who resides in the home and requires full time care; or is homeless as defined in Section 1406.50.10.05; or is unable to pursue employment because of a current, documented domestic violence situation; or is unable to work because of a critical other condition or circumstance, other than citizenship or alien status, as approved by a DHS regional manager.

Any individual approaching their time limit is notified that s/he may request a reassessment to determine whether or not s/he may meet the criteria for an extension beyond the time limit.

In this case the appellant applied for a Hardship Extension and signed an employment plan on March 27, 2015.

The appellant had applied for previous hardship extensions and the Agency testified that she was closed the last two times for non-compliance with the employment plan.

The Agency also testified that the appellant did not meet the requirements when she applied to be reassessed because previously she had two consecutive closures for non-compliance without good cause; therefore she would no longer be eligible for benefits.

The appellant testified that she did not comply with her programs but at some times she had reasons. She is ill and her doctor did not want to indicate that she was incapacitated on a C1B.

Further review of Agency Policy reveals that individuals within six (6) months of applicable time limits are sent letters informing them of the time remaining and that they may request a review of their pending closure. When a request for a reassessment is received, whether by a current recipient or a re-applicant, the Rhode Island Works caseworker must promptly determine whether or not the individual meets the criteria for an extension to the time limit.

The reassessment must also determine the extent to which his or her ability to work is affected by the applicable criteria listed in 1406.50.10.

Any hardship extension that is granted requires an amended Employment Plan (RIW-11) be signed containing steps to be taken as appropriate in order to remove/ameliorate the condition that warranted the extension. In this case the appellant had signed such a plan on at least four previous occasions and was closed the last two times due to non-compliance issues such as not attending the programs and not calling.

Agency Rules and Regulations also states that any failure to engage, whether in an employment plan activity or other program requirement, or a report of unsatisfactory progress, must trigger a notice of adverse action to which the parent has ten (10) days to supply good cause documentation. Circumstances leading to determinations of good cause for failure to participate are usually short-term in duration and result from events beyond the participant's control. In the case of a hardship extension, failure to comply with the employment plan without good cause results in a notice of case closure.

In this case the appellant stated that she did not comply with her last employment plan because she had medical issues. She was unable to obtain medical documentation of this.

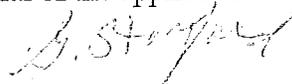
The Agency testified that the caseworker did try to help the appellant during this time by allowing her time to obtain medical documentation that she was incapacitated; however, her doctor indicated that she was not.

Further review of Agency Rules and Regulations reveals that Good Cause for non-compliance with an activity in the Employment Plan (RIW-11) during a hardship extension is allowed consistent with provisions established in Section 1412.25.05: Good Cause for Failure to Comply. A significant physical or mental incapacity must be documented on a current DHS C1-b. The appellant never applied for a hardship on the basis of incapacity and she could not provide the requested C1b to change her employment plan.

Further review of Agency Policy reveals that the employment plan is designed to contain steps to be taken as appropriate in order to remove/ameliorate the condition that warranted the extension. An applicant must meet all other RI Works eligibility requirements to be granted a hardship extension, one of which is to be in compliance with an employment plan and making good progress.

It is clear from the evidence and testimony in this case that the appellant was not in compliance with work plans or making good progress. None of the reasons given by the appellant as to why she was not complying could be determined to be good cause.

After careful review of Agency Policies and the evidence and testimony submitted this Appeals Officer finds that the appellant did not have good cause for failure to comply with previous employment plans; therefore she was not meeting Hardship Eligibility Criteria and the Agency's Denial of the application is upheld and the appellant's request for relief is denied.


Geraldyn B. Stanford
Appeals Officer

APPENDIX

1400.05 LEGAL PROVISIONS

The Rhode Island Works Program (RIGL 40-5.2 et seq.) establishes the legal basis for a welfare to work program to assist needy families to prepare for, accept and retain employment with necessary supports, as quickly as possible, and is the law through which the Federal assistance program, Temporary Assistance for Needy Families, is available to families in Rhode Island who meet program eligibility criteria. The Department of Human Services is charged with the responsibility of setting forth the eligibility requirements established in law. All provisions of RIGL 40-5.2 et seq. shall be effective and apply to all applicants and recipients on or after July 1, 2008, except those described in Section 1406.50, Time Limits.

HARDSHIP

In the case of a hardship extension, failure to comply with the employment plan without good cause results in a notice of case closure.

employment and reducing dependence on income supports.

1406.50.10.05 Hardship Extensions and Procedures

REV: 03/2012

DHS provides initial hardship extensions for six (6) months. Additional three (3) month hardships are available. Parents and/or relative caretakers who receive a hardship extension have the option to request early termination of benefits through contacting their Social Worker. Individuals within six (6) months of applicable time limits are sent letters informing them of the time remaining and that they may request a review of their pending closure. When a request for a reassessment is received, whether by a current recipient or a re-applicant, the Rhode Island Works case worker must promptly determine whether or not the individual meets the criteria for an extension to the time limit. The reassessment must also determine the extent to which her or his ability to work is affected by the applicable criteria listed in 1406.50.10. Any hardship extension that is granted requires an amended Employment Plan (RIW-11) be signed containing steps to be taken as appropriate in order to remove/ameliorate the condition that warranted the extension. RIW workers may utilize alternate methods to communicate with parents to review amendments and CLOG agreed upon amendments to move forward with the extension.

If a requesting parent cannot have an Employment Plan (RIW-11) entered into the eligibility system due to a reason for exclusion (e.g., noncitizenage not meeting PRWORA requirements), a written plan (RIW-11) is required to be developed, and to be signed by the parent stating that the parent will cooperate with services to ameliorate the condition that led to the hardship. In addition, because an undocumented non-citizen parent cannot legally work, the parent is referred, as appropriate, to the International Institute to determine whether or not there is a pathway to legal status as a work activity.

Good cause for non-compliance with an activity in the Employment Plan (RIW-11) during a hardship extension is allowed consistent with provisions established in Section 1412.25.05: Good Cause for Failure to Comply. If good cause is found, the parent is allowed to continue or renew the request for hardship and must demonstrate compliance with the

plan consistent with provisions established in Section 1412.40: Ending Work Penalties.

The following lists the documentation required to support the criteria listed in 1406.50.10:

1. Significant physical or mental incapacity

a. The following must occur for approval of an initial hardship request:

i. A significant physical or mental incapacity must be Rhode Island Works Program Rule

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documented on a current DHS C1-b.

ii. The individual must apply for or have a pending application for SSI or SSDI.

iii. The individual must have submitted an application for or be active and in compliance with his/her employment plan with the Office of Rehabilitation Services (ORS) Vocational Rehabilitation.

b. Subsequent incremental extensions require the following:

i. An updated DHS C1-b form.

ii. Documentation of the active status or documentation of the appeal of a denial of the SSI/SSDI application.

iii. Documentation of ongoing compliance in the individual's rehabilitation employment plan as reported by ORS, or documentation that the individual was found eligible for vocational rehabilitation services but was placed on a wait list for services under the order of selection.

2. Care for a significantly disabled family member who resides in the home and requires full time care:

a. The following must occur for approval of an initial hardship request:

i. Documentation through a descriptive statement from a Doctor of Medicine (M.D.), Psychiatrist (M.D.), Psychologist (PhD), or Doctor Of Osteopathy (D.O.) that said level of care is required.

ii. In addition to the full-time care of the family member, the individual's employment plan must include a requirement that the individual develop a plan for transfer of care (for the disabled family member) to enable a return to employment for the individual or other plan for support in anticipation of the end of cash assistance.

b. Subsequent incremental extensions require the following:

i. An updated medical statement

ii. An updated plan for transfer of care to transition from cash assistance.

3. Homeless

a. The following must occur for approval of an initial hardship request:

i. Documentation of homelessness either from a shelter or evidence as described in Section 1426.25.10 - 1426.25.10.05.

ii. The family must be referred to the housing social caseworker or be active and in compliance with his/her employment plan addressing barriers to securing stability with housing. Work activities for homelessness include keeping a detailed account of the search and the outcome of all inquiries to demonstrate good faith efforts with securing housing.

b. Requests for subsequent incremental extensions must be accompanied by the submission of a letter of support for the extension from a housing search specialist.

4. Domestic Violence

a. The following must occur for approval of an initial hardship request:

i. Documentation by a Family Violence Advocate.
 ii. An employment plan is developed that articulates appropriate steps to reduce the threat of violence and increase family security, including steps to prepare for employment and economic independence in the shortest time possible.

b. Requests for subsequent incremental extensions must be accompanied by the submission of a written letter supporting the extension from a community partner and/or family violence advocate who is involved with the individual.

4. Inability to work because of a critical other condition or circumstance, other than citizenship or non-citizenage status, is documented as deemed appropriate by the supervisor

who approves the extension.

1412.40 ENDING WORK PENALTIES

REV: 03/2012

A penalty for failure or refusal to comply with the employment plan or other program requirement can be ended if the individual complies as follows:

- Refusal to report to an employer when referred by the agency representative -- reporting to this employer if work is still available or to another employer to whom the parent is referred during a job search;

- Refusal to accept a bona fide offer of employment when referred by the agency representative -- acceptance of this employment, if still available to the individual, of any other employment with earnings equivalent to the refused job, or any other employment of at least thirty (30) hours per Rhode Island Works Program Rule

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week, with weekly earnings equal to the higher of the state or Federal minimum wage multiplied by thirty (30) hours;

- Refusal to comply with a RI Works Employment Plan or other program requirement -- compliance with the activity, assignment or an alternate assignment by the agency representative. In order to demonstrate that her/his failure to comply has ceased, an individual must participate in the previously assigned activity or an alternate assignment by the agency representative for two (2) consecutive weeks (and continue to participate thereafter). If the individual successfully participates during that probationary time period, the sanction will be considered to have ended as of the day s/he began to participate two (2) weeks earlier. If no such activity is available within thirty (30) days, the sanction will end on the day s/he agrees to participate.

- Under no circumstances, including hardship extensions, shall an individual be granted more than two (2) consecutive episodes of non-compliance with the employment plan without good cause which are followed by the reinstatement of cash

assistance.

If the family's benefit has been reduced in accordance with paragraph one of Section 1412.30 for less than three (3) months, whether or not consecutive, due to the parent's failure to enter into or comply with an individual employment plan or failure to comply with other program requirements, benefits shall be restored to the full amount beginning with the initial payment made on the first of the month following the month in which the parent (1) enters into an individual employment plan and demonstrates compliance with the terms thereof, or (2) demonstrates compliance with the terms of his or her existing individual employment plan, as such plan may be amended by agreement of the parent and the Department, or other program requirements.

If the family's benefit has been terminated in accordance with paragraph three of 1412.30 due to the failure by one or more parents to enter into an individual employment plan or failure to comply with the terms of his or her individual employment plan, the family may re-apply for benefits and benefits shall be restored to the family in the full amount the family is otherwise entitled to under this chapter beginning on the first of the month following the month in which all parents in the family who are subject to the employment plan requirements (1) enter into an individual employment plan and demonstrate compliance with the terms thereof, or (2) demonstrate compliance with the terms of his or her existing individual employment plan, as such plan may be amended by agreement of the parent and the Department, or other program requirements.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.