

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5081157132	LUCAS	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1632407	OWF	SUSTAINED
1632409	PAF	SUSTAINED
1632410	MED	SUSTAINED
No Compliance Required		
Decision Date:	03/09/2011	
Request Date:	12/14/2010	
Hearing Officer:	DONALD C. LECK	

State Hearing Decision

ISSUE SECTION

Appeal 1632407 Ohio Works First Cash Assistance

Appeal 1632409 Food Assistance

Appeal 1632410 Medicaid

Is a proposed sanction related decision by Lucas County Department of Job and Family Services to terminate OWF cash assistance and reduce food assistance for three months and to terminate Appellant's eligibility for Low-Income Families Medicaid coverage, based on a determination that Appellant failed to cooperate in establishing a child support order, correct?

It is found the sanction related decision by Lucas County Department of Job and Family Services to terminate OWF cash assistance and reduce food assistance for three months and to terminate Appellant's eligibility for Low-Income Families Medicaid coverage is in error.

It is recommended appeals 1632407, 1632409 and 1632410 should be sustained.

PROCEDURAL MATTERS

Appellant requested a state hearing about cash assistance, food assistance and Medicaid coverage; request date is 12/14/10. The Bureau of State Hearings scheduled the request for a state hearing held 03/07/11 at Lucas CDJFS. Appellant, Lucas CDJFS representative W. Hammer, and Lucas CSEA representative J. Mowry-Wilson attended.

FINDINGS OF FACT

1. Appellant is an OWF cash assistance, food assistance, and a Low-Income Families Medicaid recipient on a case administered by Lucas CDJFS.
2. All members of the OWF cash assistance case are included on the OWF assistance group.

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3. Appellant served a first occurrence OWF cash and food assistance sanction.
4. Appellant did not attend two child support proceedings to set a cash and medical support order.
5. Lucas CDJFS lacked evidence that a self-sufficiency contract and plan were in place at the time of the missed hearing dates.
6. Lucas CDJFS proposed a sanction against OWF cash and food assistance that would terminate OWF cash for three months and reduce food assistance for three months; notice issued 12/07/10.
7. Lucas CDJFS conducted a pre-termination review.
8. Lucas CDJFS proposed to terminate Appellant's eligibility for Low-Income Families Medicaid coverage; notice issued 12/07/10.
9. Appellant requested a state hearing; request date is 12/14/10.
10. Benefits continued pending this decision.
11. Appellant did not get the second child support hearing notice.

CONCLUSIONS OF POLICY

The three related issues are a sanction related termination of OWF cash for three months, a sanction related reduction in food assistance for three months, and a termination of Appellant's eligibility for Low-Income Families Medicaid coverage. Lucas CDJFS proposed the sanction against Appellant's benefits based on a CSEA determination Appellant failed to cooperate with child support. Specifically, Appellant did not attend two hearings that were scheduled for the purpose of establishing a child support order. In disagreement with the proposed sanction, Appellant requested a state hearing. Appellant contended she did not get notice of the second child support hearing.

The following is a summary of the work participation requirements in the OWF program which are relevant to this case: A work eligible individual means an adult or minor head of household receiving OWF... As soon as possible after an assistance group submits an application to participate in OWF, the CDJFS that receives the application shall schedule and conduct an appraisal of each work eligible individual ... The appraisal may include an evaluation of the employment, educational, physiological, and psychological abilities or liabilities, or both, of the work eligible individual... At the appraisal, the CDJFS shall develop with the work eligible individual a plan for the assistance group to achieve the goal of self sufficiency and personal responsibility.(Ohio Admin. Code § 5101:1-3-12(B)(1)(06/2010)).

In accordance with rule 5101:1-3-10 of the Administrative Code, a caretaker who is a member of the OWF assistance group of a child who receives OWF benefits shall cooperate with the CSEA, unless the CSEA approves a good cause waiver of cooperation. The caretaker of a child who receives Medicaid benefits shall cooperate with the CSEA unless the CSEA approves a good

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cause waiver of cooperation. The CSEA in a charter county shall consider a caretaker non-cooperative when the caretaker fails to attend any court or administrative hearing to determine the existence or non-existence of a father and child relationship or to establish or modify a child support order, including medical support provisions contained in the child support order, or to enforce a support order. (Ohio Admin. Code § 5101:12-10-31(12/2009))

When the CSEA determines that cooperation from the caretaker is not in the best interests of the child or would make it more difficult for the caretaker or child to escape domestic violence, the CSEA shall approve a good cause waiver. (Ohio Admin. Code § 5101:12-10-32(01/2008))

Pre-termination review (PTR). Pursuant to 42 C.F.R. 435.930 (as in effect on October 1, 2009) the administrative agency shall determine whether the individual is eligible for any other category of medical assistance before proposing to terminate an individual's medical assistance for any reason. (Ohio Admin. Code § 5101:1-38-01.2 (10/2009))

If a member of an assistance group fails or refuses, without good cause, to comply in full with a provision of a self-sufficiency contract entered into under paragraph (D) of rule 5101:1-3-12 of the Administrative Code, a CDJFS shall sanction the assistance group as follows:

- (2) For a second failure or refusal, the CDJFS shall deny or terminate the assistance group's eligibility to participate in OWF for three payment months or until the failure or refusal ceases, whichever is longer (OAC 5101:1-3-15(B)(10/2009)).

When all members of the Ohio Works First assistance group also received food assistance the failure to comply with the self-sufficiency contract without good cause also results in a food assistance sanction against the failing member and a reduction in the food stamp benefits for the assistance group. (Ohio Admin. Code § 5101:4-3-09(F)(10/2009) and CFR § 273.7).

The agency representative presents and is the advocate for the agency's case at the hearing; this person shall explain the reasons for the agency's action, cite the regulations upon which the action was based, provide relevant case information and documents, and answer relevant questions from the individual and the hearing officer (Ohio Admin. Code § 5101:6-6-02)(09/2008)).

The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties; it shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules (Ohio Admin. Code § 5101:6-7-01)(09/2008)).

Central to the issues is the determination of failure to cooperate. Appellant, as an OWF cash assistance and Low-Income Families Medicaid recipient, is required to cooperate with Lucas CSEA in establishing a support order. Lucas CSEA determined Appellant failed to cooperate because she did not attend two scheduled hearings. Appellant contended she did not get notice of the second hearing.

Lucas CSEA has as evidence the first hearing notice that lists an incorrect zip code. Appellant reportedly got the notice despite this. Lucas CDJFS has as evidence a magistrate's decision that Appellant failed to appear for her second hearing. There lacks evidence of where the court issued notice of the second hearing to. The Lucas CSEA representative explained this

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information could be located through the court but did not have it for the state hearing. Evidence cannot be submitted outside the state hearing proceedings (Ohio Admin. Code § 5101:6-7-01 (08/2010)). Then there is Appellant's sworn testimony that she did not get the second notice; there was found no reason to discredit the testimony of the Appellant. Weight of evidence leads to a finding of fact Appellant did not get the second notice. Clearly, then a failure did not occur. As such, there lacks basis for the proposed sanction.

To note, Lucas CDJFS lacked evidence that a self-sufficiency contract and plan was in place at the time of the sanction. Had it been found a failure occurred, there would have lacked grounds to support the Department's decision to place a sanction against cash and food assistance.

HEARING OFFICER'S RECOMMENDATION

Based on the record before me, it is recommended that appeals 1632407, 1632409 and 1632410 should be sustained.

It is noted benefits continued pending this decision. Lucas CDJFS is directed to **void** the sanction.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted and appeals 1632407, 1632409 and 1632410 are sustained.

Hearing Authority

March 9, 2011

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the TOLEDO District hearing section at 1-866-635-3748.

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, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request 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 may request a free copy of the tape recording of the hearing by contacting the district hearings section.

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.

Aviso a la Apelante

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Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

Exhibits

Appellant

1. State Hearing Request

Lucas CDJFS

A. Appeal Summary

B. CRISE case record (5 pages)

Lucas CSEA

C. Appeal narrative

D. SETS case record information (3 pages)

E. Notice of Hearing

F. Magistrates Interim Order