

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA

JESUSITA YOLANDA ARELLANO,)
)
 Appellant,)
)
 v.)
)
 STATE OF NEBRASKA,)
 NEBRASKA DEPARTMENT OF)
 HEALTH AND HUMAN SERVICES,)
 and RON ROSS, DIRECTOR,)
)
 Appellees.)
 _____)

Case No. Ci- 01-51 H

APPELLANT'S BRIEF

COMES NOW the Appellant, Jesusita Yolanda Arellano, by and through her attorney, Rae Ann Schmitz, and submits the following Appellant's Brief:

I. STATEMENT OF THE CASE

A. Jurisdiction

This case comes before this court on appeal from a final administrative hearing decision affirming the actions of the Gering Administrative Office of the Nebraska Department of Health and Human Services. This appeal is taken pursuant to Neb. Rev. Stat. § 84-917, and under the Nebraska Welfare Reform Act (WRA), Neb. Rev. Stat. § 68-1709 *et. seq.*

B. Scope of Review

The court shall review the claim without a jury, de novo on the record of the agency. Neb. Rev. Stat. § 84-917(5)(a).

C. Procedural History

The Appellant has been receiving public assistance off and on since 1991. (T: 87:10-11) She signed an **Employment First Self-Sufficiency Contract**, (Exhibit #15) on February 1,

1999; an **Employment First Service Plan** (Exhibit #3) on August 6, 1999 and an undated **Employment First Participant Assessment** (Exhibit #16). No **Employment First Employment Plan**, as required by the last paragraph of the Employment First Self-Sufficiency Contract, (Exhibit #15), is included in the record.

The record shows that two warnings, WP-5 forms, (Exhibits #4 and #5) were mailed to the Appellant on 7/31/00 and 9/29/00 respectively. Both warnings addressed the Appellant's "failure to keep appointments with her case manager or other agency providing service." (Exhibits #4 and #5). The Appellant complied with the action required by both notices by appearing at the conciliation meetings on August 11, 2000 (T: 32, 18-19) and October 16, 2000. (T: 35, 2-3). However, on 10-20-00 the NDHHS issued a **Notice of Action (Exhibit # 15)** sanctioning the Appellant with a loss of benefits for 30 days for 1) failing to keep her appointment with Tanya and Karen on October 17 and October 24, 2000; and 2) for not obtaining her driver's license.

The Appellant filed a timely appeal on October 25, 2000. An administrative hearing was held by telephone before Audie Wise, Designated Hearing Officer, on the 6th day of December, 2000. On December 21, 2000 the Director of the Nebraska Department of Health and Human Services issued his written decision which affirmed the initial adverse action. (Official Transcript). Appellant timely appealed to this court.

D. Statement of Facts

Yolanda Jesusita Arellano, hereafter referred to as Appellant, is a welfare recipient with a long history (since 1991) of dependency on Public Assistance. (T87: 10-11) She is a single parent, raising five (5) teenage children, 16, 14, 13, 12, 10 and an 11-month-old grandson (T59:

21-22) born to her 16 year old daughter. (Exhibit #14) Appellant has a history of alcohol abuse. Her driver's license was suspended for 15 years in 1991 (Exhibit #14) for repeated convictions of Driving Under the Influence of alcohol (T10: 10-11) About the same time her children were removed from her home by Child Protective Services for alcohol related offenses and she was required to participate in classes and therapy (T30: 24-24, T31: 1-4) About 4 years after the 15-year suspension was imposed, she received a citation for driving under suspension (T63: 9-11). Although the Appellant has had no recent alcohol related offenses and seems to have her alcoholism under control, she still has dysfunctions related to her addictions (Exhibit 16).

In the Participant Assessment the Appellant described her barriers to employment as "transportation, training, emotional issues, more education, clothing for work, and help with a resume." (Exhibit 16).

The **Employment First Service Plan** (Exhibit 3) established some short-term goals for the Appellant as follows: 1) Check into the license (time frame 10-15-99) 2) Complete computer classes (time frame 8-9-99); and 3) Doctor's note excusing her from work (time frame 8-18-99). The Plan did not address the expressed need of the Appellant for transportation, training or counseling.

Appellant complied with the first goal that she "check on license" by 10-15-99 as follows:

She talked to State Senator, Adrian Smith; she got a 20- page application for reinstatement of a license from Adrian Smith; she consulted with a private attorney, Bell Island, who told her that there was no chance to get a reinstatement because of the DUS (driving under suspension); she called the Department of Motor Vehicles, she called Tom Wakeley, from the Board of Pardons, who said that applications for reinstatement of drivers' license are reviewed twice per year and the next review would be in 2001. She tried to complete the 20 page

application form by collecting the necessary data. She went to the courthouse and obtained the records of her case dispositions; she obtained six letters of referrals, she sought a reference from an alcohol counselor, and she checked into getting a work permit (T 61: 25, T62, T63, T64, T65: 1-7)

The second goal listed on the Service Plan is “computer classes” and “JTPA.” Claimant testified that she completed the computer courses mandated under her Service Plan, by completing the computer training program at the Terry Carpenter Center in 2000. (T45: 2-4 and T85: 21-25, T86: 1). She testified that she fulfilled the “JTPA” requirement by working at Job Service for three months from February 23rd until May 23rd . (T66: 6-25)

The third goal on the Service Plan is “Doctors Note excusing from work.” Appellant testified with respect to her health problems, knee and hip problems, which make it difficult for her to walk to work. (T80: 16-19). She offered into evidence a statement from her physicians, Scottsbluff Orthopaedic Associates, PC., which recommends physical therapy. (Exhibit #3 and #13).

The Case Manager testified that no other Service Plan had been implemented since the August, 1999 plan. (T39: 8-12) There were no periodic assessments completed to review the plan or to evaluate the goals and objectives of the plan. (T41: 7-9, 15-24).

The overriding issue addressed in the administrative hearing and the issue that is not addressed in the Service Plan is the Appellant’s continuing lack of transportation. The appointments that Appellant missed at Workforce Development and Goodwill Industries (Tanya and Karen) on October 17 and October 24, which resulted in this sanction, were more than a mile from her home (T81: 7-25, 82: 1-2) The NDHHS made no arrangements to help Appellant with transportation to these appointments. (T26: 9 through 27,28, 29: 1-14). The evidence further

showed that the Appellant did keep one of the appointments on October 17 with Tanya because Tanya came to her home on that day (T37-18-25, T38: 1-9)9T61: 5-21)

Appellant has no running vehicle, no driver's license, and no other means of reliable transportation. (T84: 2-19). There is a cab company for a fee, but there is no public transportation in Scottsbluff, Nebraska (T27: 6-19). The Appellant testified with regard to the distance between her home and the Workforce Development (19 blocks) (T81: 13-25) Ms. Dixon also testified that the distance between the client's home and the NDHHS office is about three miles. (T29: 5-8) The Appellant also testified that a lack of transportation complicated her life because not only could she not look for jobs, but she also lost jobs because she did not have transportation (T78: 3-13) and she could not apply for jobs such as at Sykes (T) because it was too far. She also has missed doctors' appointments, school activities for her children, court appointments, and family counseling (T78: 3-13) The Appellant also testified that the state agency has never provided gas vouchers (T 26: 21-25, T27: 1-5) but she did get two or three gas vouchers from Workforce Development in the winter (T80: 4-10) There is no evidence that NDHHS provided any transportation assistance to this recipient during this "welfare to work" transition.

The Appellant repeatedly asked for assistance with transportation. She often canceled her appointments because she did not have a ride. The case worker states in her case narrative: "She (Yolanda) felt getting away from Scottsbluff, and moving to an area with public transportation may be better for her getting employment. (Exhibit #2) Appellant's letter to NDHHS (Exhibit 14) expressly states that the lack of transportation is a barrier that the Appellant cannot overcome by herself.

But the agency does not create a plan to address the lack of transportation even though the caseworker acknowledges that “Her main barrier being her transportation” (T 9: 14).

II. ISSUES ON APPEAL

1. Is there a valid Employment First Self-Sufficiency contract between the Nebraska Department of Health and Human Services (hereinafter NDHHS) and Jesusita Yolanda Arellano? And if so, was there compliance with the terms of the contract by Jesusita Yolanda Arellano and by the State?

2. Was it reasonable to expect Jesusita Yolanda Arellano to remove a 15- year court imposed drivers’ license suspension without legal assistance?

3. Was it reasonable for NDHHS to sanction Jesusita Yolanda Arellano for not overcoming her transportation barrier without transportation assistance from NDHHS?

4. Is Jesusita Yolanda Arellano entitled to a maximum two-year extension (68-1722 and 68-1724) because the state failed to establish a reciprocal relationship with the recipient (Exhibit 15) ; because the state failed to provide the recipient with intensive support needed to move from public assistance to economic self-sufficiency (68-1709) (5); because the self-sufficiency contract did not set measurable goals with timelines and benchmarks to facilitate forward momentum (68-1719); because the state failed to provide supportive services, especially transportation assistance (68-1722); because the responsibilities, roles, and expectations of the the applicant family, the case manager, and all other service providers were not detailed in the self-sufficiency contract (68-1720); and because no periodic assessments were made to establish if the terms of the self-sufficiency contract were being met by the recipient family and by the state (68-1718)(4).

III. APPLICABLE LAW AND REGULATIONS

The issues presented in this action require the interpretation of Nebraska statutory law/the Welfare Reform Act and certain provisions of the Nebraska Administrative Code (NAC Rules) regarding Temporary Aid to Needy Families (TANF). The statutory provisions are found at Nebraska Welfare Reform Act (WRA), Neb. Rev. Stat. § 68-1709 *et. seq.* The agency regulations are found at 468 NAC 2-020.02-.08, www.hhs.state.ne.us/reg/t468.htm.

ARGUMENT

I.

THE PURPORTED EMPLOYMENT FIRST SELF-SUFFICIENCY CONTRACT BETWEEN THE NDHHS AND APPELLANT IS INVALID OR ALTERNATIVELY, THE APPELLANT COMPLIED WITH THE TERMS OF THE CONTRACT.

A. **The Employment First Self-Sufficiency Contract is invalid because:**

1. It fails to provide the Appellant the support needed to move from public assistance to economic self-sufficiency (§68-1709 (5) R.R.S. 1996);
2. It fails to comprehensively assess the Appellant's personal resources, education, vocational skill, employment history, health, life skills, personal strengths, and support from family and the community. (§68-1718 (1) R.R.S. 1996)
3. It fails to include a determination of the applicant's goals, employment background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency. (§68-1718 (2) R.R.S. 1996)
4. The assessment was not used to develop a self-sufficiency contract which would promote services which would specifically lead to Appellant's self-sufficiency; (§68-1718(3) R.R.S. 1996.
5. It fails to include periodic assessments with Appellant to establish if the terms of the self-sufficiency contract have been met by her, her family and by the state. (§68-1718(4) R.R.S. 1996) and 468 NAC 2-020.04.
6. It fails to ensure that the Appellant make constant, measurable progress toward self-sufficiency, by setting goals with timelines and benchmarks that facilitate forward momentum. (§68-1719 R.R.S. 1996)
7. It fails to detail the responsibilities, roles, and expectations of the Appellant, her family, the case manager, and all other service providers in the self-sufficiency contract. The state failed to fulfill it's respective terms of the contract. (§68-1720 R.R.S. 1996)
8. It failed to provide supportive services especially assistance with transportation expenses, parenting education, family planning, and budgeting to provide for

specific needs critical to the self-sufficiency contract for the Appellant and her family. (§68-1722 R.R.S. 1996).

9. The **Employment First Self Sufficiency Contract** provides that the NDHHS “agrees to provide component activities and supportive services detailed in the **Employment First Service and Employment Plans.**” (Exhibit 15) The state failed to include as a component part of the Appellant’s contract the required **Employment First Employment Plan.**

10. When the state fails to provide critical supportive services, such as transportation assistance, the two-year limit on cash assistance shall be extended for an additional period of not more than two years. (§68-1722 R.R.S. 1996).

B. Alternatively, if the Employment First Self-Sufficiency Contract is valid, then the Appellant complied with the terms of the contract as follows:

The **Employment First Service Plan** (Exhibit 3) dated August 6, 1999 established some short-term goals for the Appellant as follows: 1) Check into the license (time frame 10-15-99) 2) Complete computer classes (time frame 8-9-99); and 3) Doctor’s note excusing her from work (time frame 8-18-99).

Compliance with Goal 1: Appellant complied with the first goal that she “check on license” as follows:

She talked to State Senator, Adrian Smith; she got a 20- page application for reinstatement of a license from Adrian Smith; she consulted with a private attorney, Bell Island, who told her that there was no chance to get a reinstatement because of the DUS (driving under suspension); she called the Department of Motor Vehicles, she called Tom Wakeley, from the Board of Pardons, who said that applications for reinstatement of drivers’ license are reviewed twice per year and the next review would be in 2001. She

tried to complete the 20 page application form by collecting the necessary data. She went to the courthouse and obtained the records of her case dispositions; she obtained six letters of referrals, she sought a reference from an alcohol counselor, she checked into getting a work permit, and she had worked with a local agency employee, Liz Marrero; The Appellant also testified that one of the requirements for reinstatement of a license revoked for alcohol related offenses is that the applicant must successfully complete some type of alcohol program. (T 61: 25, T62, T63, T64, T65: 1-7)

Compliance with Goal 2: The second goal listed on the Service Plan is “computer classes” and “JTPA.” Appellant completed the computer courses mandated under her Service Plan, by completing the computer training program at the Terry Carpenter Center in 2000. (T45: 2-4 and T85: 21-25, T86: 1). She fulfilled the “JTPA” requirement by working at Job Service for three months from February 23rd until May 23rd. (T66: 6-25)

Compliance with Goal 3: The third goal on the Service Plan is “Doctors Note excusing from work.” Appellant testified with respect to her health problems, knee and hip problems, which make it difficult for her to walk to work. (T80: 16-19). She offered into evidence a statement from her physicians, Scottsbluff Orthopaedic Associates, PC., which recommends physical therapy. (Exhibit #13).

II.

IT IS UNREASONABLE TO EXPECT APPELLANT TO DISCHARGE A 15- YEAR COURT IMPOSED DRIVERS' LICENSE SUSPENSION WITHOUT LEGAL ASSISTANCE.

The requirements of the Service Plan required the Appellant to “check on the license.” The Appellant did “check on the license” as outlined above in I B. Compliance with Goal 1. The Case Manager did not like the answer.

The Case Manager’s expectations of this recipient are unrealistic. The Case Manager argues that the Appellant has had 9 years in which to obtain a reinstatement of her driver’s license, (T87: 7-14) however, Appellant was not then and is not now able to comply with Neb. Rev. Stat. Section 60-6,209, the statutes governing driver’s license reinstatements:

Rev. Stat. Section 60-6,209: License revocation; reinstatement; conditions; department; Board of Pardons; duties; fee. (1) Any person whose operator's license has been revoked pursuant to sections 60-6,196, 60-6,197, and 60-6,199 to 60-6,208 for a third or subsequent time for a period of fifteen years may apply to the Department of Motor Vehicles, on forms prescribed by the department, requesting the department to make a recommendation to the Board of Pardons for reinstatement of his or her operator's license. Upon receipt of the application, the Director of Motor Vehicles shall review the application if such person has served at least seven years of such revocation and make a recommendation for reinstatement or for denial of reinstatement. The department may recommend reinstatement if such person shows the following:

- (a) Such person has completed a state-certified substance abuse program and is recovering or such person has substantially recovered from the dependency on or tendency to abuse alcohol or drugs;
- (b) Such person has not been convicted, since the date of the revocation order, of any subsequent violations of section 60-6,196 or 60-6,197 or any comparable city or village ordinance and the applicant has not, since the date of the revocation order, submitted to a chemical test under section 60-6,197 that indicated an alcohol concentration in violation of section 60-6,196 or refused to submit to a chemical test under section 60-6,197;
- (c) Such person has not been convicted, since the date of the revocation order, of driving while under suspension, revocation, or impoundment under section 60-4,109;
- (d) Such person has abstained from the consumption of alcoholic beverages and the consumption of drugs except at the direction of a licensed physician or pursuant to a valid prescription; and
- (e) Such person's operator's license is not currently subject to suspension or revocation for any other reason.

(2) In addition, the department may require other evidence from such person to show that restoring such person's privilege to drive will not

present a danger to the health and safety of other persons using the highways.

(3) Upon review of the application, the director shall make the recommendation to the Board of Pardons in writing and shall briefly state the reasons for the recommendations. The recommendation shall include the original application and other evidence submitted by such person. The recommendation shall also include any record of any other applications such person has previously filed under this section.

(4) The department shall adopt and promulgate rules and regulations to govern the procedures for making a recommendation to the Board of Pardons. Such rules and regulations shall include the requirement that the treatment programs and counselors who provide information about such person to the department must be certified by the state.

(5) If the Board of Pardons reinstates such person's operator's license, such reinstatement may be conditioned for the duration of the original revocation period on such person's continued recovery. If such person is convicted of any subsequent violation of section 60-6,196 or 60-6,197, the reinstatement of the operator's license shall be withdrawn and such person's operator's license will be revoked by the Department of Motor Vehicles for the time remaining under the original revocation, independent of any sentence imposed by the court, after thirty days' written notice to the person by first-class mail at his or her last-known mailing address as shown by the records of the department.

(6) If the Board of Pardons reinstates a person's operator's license, the board shall notify the Department of Motor Vehicles of the reinstatement. Such person may have his or her operator's license reinstated by the department upon payment of a fee of ninety-five dollars and the filing of proof of financial responsibility. The fees paid pursuant to this section shall be collected by the department and remitted to the State Treasurer. The State Treasurer shall credit fifty dollars of each fee to the General Fund and forty-five dollars of each fee to the Department of Motor Vehicles Cash Fund.

A realistic Employment First Contract, and the related assessment of needs would have taken this statute into account and would have set out a reasonable plan to accomplish the criteria of license reinstatement. Such a plan would have included consultations with an attorney; financial assistance to pay for an attorney; it might have addressed an Intoxalox; it would have included an evaluation for drug and alcohol dependence; it might have included residential or out-patient treatment.

The family unit clearly meets all of the elements of dysfunction and high risk.

There is

no question that such a family would require the “intense assistance” and “crucial supportive services” necessary if Appellant is expected to successfully perform and carry out the terms of her Self Sufficiency contract. In the absence of such support, or to expect any less than intense support, would mean failure on Appellant’s part to perform under her contract.

III.

IT IS UNREASONABLE FOR NDHHS TO SANCTION APPELLANT FOR NOT OVERCOMING HER TRANSPORTATION BARRIER WITHOUT FIRST ADDRESSING HER TRANSPORTATION NEEDS IN THE PARTICIPANT ASSESSMENT AND DETAILING THE RESPONSIBILITIES OF BOTH THE APPELLANT AND THE STATE IN THE SERVICE PLAN.

The Welfare Reform Act provides that eligibility for cash assistance begins with a comprehensive assets assessment, wherein the applicant and case manager collaborate to identify the economic and personal resources available to the Applicant.

Each applicant's personal resources shall be assessed in the comprehensive assets assessment. Personal resources shall include education, vocational skills, employment history, health, life skills, personal strengths, and support from family and the community. This assessment shall also include a determination of the applicant's goals, employment background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency.

(§68-1718 (2) R.R.S. 1996).

To ensure that the applicant can make constant, measurable progress toward self-sufficiency, goals shall beset with timelines and benchmarks that facilitate forward momentum. (§68-1719 R.R.S. 1996).

Supportive services shall include, but not be limited to, assistance with transportation expenses, participation and work expenses, parenting education, family planning, budgeting, and relocation to provide for specific needs critical to the recipient's or the recipient family's self-sufficiency contract. If the state fails to meet the specific terms of the self-sufficiency contract, the two-year limit on cash assistance under § 68-1724 shall be extended for an additional period of not more than two years. (§68-1722 R.R.S. 1996).

Not only was it unreasonable for the State to sanction the Appellant but conversely the State should be required to extend the self-sufficiency contract for failing to address the comprehensive needs of the Appellant and provide the supportive services specifically stated in the statutes to include transportation services.

IV.

THE APPELLANT IS ENTITLED TO A MAXIMUM TWO-YEAR EXTENSION (68-1722 AND 68-1724) BECAUSE THE STATE FAILED TO ESTABLISH A RECIPROCAL RELATIONSHIP WITH THE RECIPIENT (EXHIBIT 15) ; BECAUSE THE STATE FAILED TO PROVIDE THE RECIPIENT WITH INTENSIVE SUPPORT NEEDED TO MOVE FROM PUBLIC ASSISTANCE TO ECONOMIC SELF-SUFFICIENCY (68-1709) (5); BECAUSE THE SELF-SUFFICIENCY CONTRACT DID NOT SET

MEASURABLE GOALS WITH TIMELINES AND BENCHMARKS TO FACILITATE FORWARD MOMENTUM (68-1719); BECAUSE THE STATE FAILED TO PROVIDE SUPPORTIVE SERVICES, ESPECIALLY TRANSPORTATION ASSISTANCE (68-1722); BECAUSE THE RESPONSIBILITIES, ROLES, AND EXPECTATIONS OF THE APPLICANT FAMILY, THE CASE MANAGER, AND ALL OTHER SERVICE PROVIDERS WERE NOT DETAILED IN THE SELF-SUFFICIENCY CONTRACT (68-1720); AND BECAUSE NO PERIODIC ASSESSMENTS WERE MADE TO ESTABLISH IF THE TERMS OF THE SELF-SUFFICIENCY CONTRACT WERE BEING MET BY THE RECIPIENT FAMILY AND BY THE STATE (68-1718)(4).

The statutes make it very clear that supportive services are to be provided by the State in the self-sufficiency contract. The penalty to the State for failing to perform its duties under the contract are repeated in two sections of the law. In 68-1722 in the very paragraph reciting that the State should provide transportation services, it also provides that if the state fails to meet the specific terms of the self-sufficiency contract, the two-year limit on cash assistance shall be extended for an additional period of not more than two years.

The penalty is repeated in 68-1724(a).

The Self- Sufficiency Contract itself (Exhibit 15) clearly states as follows:

“The Nebraska Department of Health and Human Services agrees to provide component activities and supportive services detailed in the Employment First Service and Employment Plans, which are a part of this contract. The NDHHS will also provide cash assistance, medical assistance, child care assistance, and child support enforcement services according to the rules and regulations established for those programs. If the Department fails to meet their terms of the Self-Sufficiency Contract, cash assistance will not be terminated after 24 months.”

The State should be required to conduct a new comprehensive assets assessment and a new Employment First Service Plan and a new Employment First Employment Plan that reaches for the Appellant's highest level of economic self-sufficiency. (§68-1726 R.R.S. 1996).

CONCLUSION

Appellant asks that the Court reverse the decision of the NDHHS to impose a sanction;

that the Appellant not be required to reimburse the state for benefits issued to her during the pendency of this appeal; that the NDHHS be required to do a Comprehensive Assets Assessment according to law; that the NDHHS be required to implement a new Service Plan that is more suitable to the client's needs, including certified alcohol and drug treatment, and transportation assistance; that the NDHHS be required to collaborate with the Appellant to create a new Employment Plan which reaches for her highest level of economic self-sufficiency, and that the NDHHS be required to continue cash assistance to the appellant for an additional period not to exceed two years.

In the event that the Court does not reverse the decision to impose a sanction, then we ask the Court to offset child support in the amount of \$344.00 per month against the \$719.00 per month TANF grant.

Dated this 16th day of May, 2001.

Appellant

JESUSITA YOLANDA ARELLANO,

BY:

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing Appellant's Brief was sent by regular U.S. Mail, postage prepaid on the 16th day of March, 2001 to the following:

ROYCE N. HARPER, Attorney at Law, State Capitol, #2115, P.O. Box 98920
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Rae Ann Schmitz