

FILED

IN THE SUPREME COURT OF NEBRASKA

AUG 01 2003

Jesusita Yolanda Arellano, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 State of Nebraska, Department )  
 of Health and Human Services, )  
 and Ron Ross, Director, )  
 )  
 Appellees. )

No. S-01-899.

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

Memorandum Opinion  
and  
Judgment on Appeal

HENDRY, C.J., WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and  
MILLER-LERMAN, JJ.

GERRARD, J.

Jesusita Yolanda Arellano is the mother of five minor children and has custody of one grandchild as well. In March 1999, she began to receive public assistance under the Welfare Reform Act (the Act), Neb Rev. Stat. § 68-1708 et. seq. (Reissue 1996 & Cum. Supp. 2002). The Nebraska Department of Health and Human Services (DHHS) suspended her cash benefits and her medical assistance for the month of November 2000, a sanction authorized by the DHHS regulations, for her failure to keep several scheduled appointments with agencies providing services to Arellano. She appealed, and a hearing was held before a hearing officer. Based on the evidence from this hearing, the director of DHHS affirmed the sanction. Arellano then filed a petition for review in the district court but was unsuccessful in that appeal as well. She now appeals the

judgment of the district court affirming the sanction. For the reasons that follow, we affirm.

#### FACTUAL BACKGROUND

Arellano's income qualifies her to receive public assistance under the Act. Upon her application for assistance, Arellano and her case worker, Peggy Lohr, created a self-sufficiency contract, a prerequisite to cash assistance benefits under the Act. Arellano signed the self-sufficiency contract on February 1, 1999. They also created an Employment First (EF) Service Plan which Arellano signed on August 6, 1999. An EF Participation Assessment Form was created and signed but without a date. According to the self-sufficiency contract, the 24 months of benefits began on March 1, 1999.

Arellano missed scheduled appointments with her case manager, as well as Karen Evans of Workforce Development, and Tanya Cherry of Goodwill Industries. Evans and Cherry were brought in to help Arellano get her driver's license reinstated. Evans was also trying to help Arellano find a job. Specifically, Arellano missed appointments with Cherry on August 19 and 27, October 3, 10, 17, and 24, 2000. The district court found that the last of these occurred after the sanctioning process began. Arellano also missed appointments with Evans on June 7, 15, 16, August 21, September 20, 28, and October 26. The district court found again that the last of these occurred after the sanctioning process began. This is in addition to at least six no-shows in 1999 with other Workforce Development personnel according to Evans' letter.

On July 31, 2000, the local DHHS office in Gering sent Arellano her first WP-5, the regulation-mandated warning that must precede sanctions. The subsequent conciliation meeting on August 11 resulted in no sanctions. The second WP-5 came on August 29. The conciliation meeting on October 16 also resulted in no immediate sanctions. However, sanctions were finally imposed in a notice sent October 20 and beginning November 1, revoking her cash assistance benefits and medical coverage benefits for the month of November 2000 for failing to keep appointments with Cherry and Evans. The record shows that even this 1-month sanction was suspended, and Arellano received her benefits with the understanding that if she loses this appeal she will reimburse DHHS for the November benefits covered by the sanction.

#### PROCEDURAL BACKGROUND

Arellano appealed this sanction to DHHS in a petition filed on October 25, 2000. As reasons for her belief that the sanction was improper, Arellano wrote that "1) The notice was inadequate 2) I disagree with the sanction and am appealing the loss of my benefits and 3) I want to keep my benefits pending the appeal decision." After an administrative law hearing, the DHHS director made the following findings: Arellano was notified of her past failure to cooperate. She was subsequently informed of an upcoming meeting. Arellano agreed to participate in that meeting but failed to attend it. Based on these findings, the sanction was affirmed.

Arellano then filed a petition for review in the district court. In her petition for review, Arellano claimed that her failure to attend the meeting and her failure to make other appointments was due to a lack of transportation as a result of lost driving privileges from prior alcohol-related offenses. Her sole cause of action alleged that DHHS violated her rights "under Nebraska statutes and administrative rules when it unlawfully sanctioned her family and took away subsistence benefits."

The district court determined that the sanction imposed on Arellano was proper because the DHHS regulations under the Act

clearly provide the basis for sanction because of non-participation. The pattern of [Arellano] missing appointments was documented well and covered a long period of time. She had been formally warned about the problem of missing appointments at least two times before being sanctioned. The hearing did not show any specific good cause for missing the appointments, except for a generalized complaint that transportation was a problem for her.

The court found that transportation was a problem for Arellano, but the court concluded that a lack of transportation could not explain or excuse of the volume and persistence of missed appointments shown by the record. As a result of these findings, the district court affirmed the sanction.

The court, however, went on to find that Arellano should not be sanctioned because of any "claimed non-compliance with her contractual obligations." The court stated that DHHS failed to

fulfill its obligations to Arellano under the Act's self-sufficiency agreement. The contractual remedy for such failure is an additional 24 months of benefits for the recipient. However, because the object of the appeal was not contract enforcement and DHHS had no notice that this was being considered, the court concluded that it was without subject matter jurisdiction to enforce an agency obligation to provide services to Arellano for an additional 24 months. It therefore did not award Arellano any relief. Arellano now appeals the judgment of the district court, alleging that that contract which is a prerequisite to the sanction was invalid.

#### ASSIGNMENTS OF ERROR

Arellano assigns, restated, that the district court erred (1) in finding that DHHS was not on notice that the district court proceeding involved issues of contract enforcement, (2) by determining that it did not have subject matter jurisdiction to address issues of contract enforcement, and (3) by affirming the sanction while finding no valid self-sufficiency contract present.

#### STANDARD OF REVIEW

A judgment or final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. *Poor v. State*, 266 Neb. 183, 663 N.W.2d 109 (2003).

## ANALYSIS

The emphasis of Arellano's appeal is that the district court had jurisdiction to decide contract enforcement issues and, thus, could have imposed contractual remedies against DHHS for DHHS' alleged failure to fulfill its obligations under the contract. We will not be addressing Arellano's assignments of error. The proper issue in this appeal is not whether the district court had jurisdiction to consider a "contractual enforcement" cause of action, but rather, whether the district court should have made any determination regarding purported "contract failures" in the first instance. Generally, in an appeal under the Administrative Procedure Act, an appellate court will not consider an issue on appeal that was not presented to or passed upon by the administrative agency. *Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11 (2003). The only issue before DHHS and the hearing officer was whether the 1-month sanction imposed upon Arellano was proper, based on the evidence presented. No issue of contractual sanctions against DHHS was raised at the agency level, nor was the issue raised in Arellano's petition for review in the district court.

Once the district court had determined that the DHHS regulation provided a clear basis for the 1-month sanction because of nonparticipation--the subject matter of the appeal--there was no reason to go further, nor should we. A court decides real controversies and determines rights actually controverted, and does not address or dispose of abstract questions or issues that might

arise in another setting. See *In re Estate of Reading*, 261 Neb. 897, 626 N.W.2d 595 (2001). Because there is no valid and sufficient reason for us to address Arellano's assignments of error, we decline to do so.

#### CONCLUSION

Because Arellano does not contest the district court's finding that she failed to adequately participate in the Employment First Program and there are no other justiciable assignments of error, we affirm the judgment of the district court.

AFFIRMED.

THE STATE OF NEBRASKA, ss.

I hereby certify that I have compared the foregoing copy of an opinion filed by this Court with the original on file in my office and that the same is a correct copy of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of this Court, in the City of Lincoln.



  
Clerk/Deputy Clerk

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