

APPELLANT

Y.

- * BEFORE MICHAEL D. CARLIS,
- * AN ADMINISTRATIVE LAW JUDGE
- * OF THE MARYLAND OFFICE
- * OF ADMINISTRATIVE HEARINGS
- * OAH No.: DHS-[REDACTED]-05-19-06095

DECISION

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STATEMENT OF THE CASE

On December 1, 2018, [REDACTED] (Appellant) applied for Temporary Cash Assistance (TCA) benefits. Md. Code Ann., Hum. Servs. § 5-312 (2019). By letter dated January 8, 2019, the [REDACTED] (local department) approved TCA for the Appellant and her two minor children.

However, by letter dated January 15, 2019, the local department notified the Appellant that her “[TCA] will end on 1/31/19 . . . [because] we told you in writing what you must prove to get TCA.” More specifically, the local department added “you failed to appear for your work activity assesment [sic] appt [sic] [appointment] on [REDACTED] 19.” The local department cited to Code of Maryland Regulations (COMAR) 07.03.03.04 as legal authority for its action.

On February 19, 2019, the Appellant, by her attorney, [REDACTED] Esquire, and the [REDACTED] requested a hearing to challenge the local [REDACTED] department's action. On March 25, 2019, I held a hearing at the local department in [REDACTED]

Maryland. COMAR 07.01.04.21B, Ms. [REDACTED] represented the Appellant, who was present at the hearing. [REDACTED] Appeals Representative, represented the local department.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Human Services (Department), and the Rules of Procedure of the Office of Administrative Hearings (OAH) govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 07.01.04; and COMAR 28.02.01.

ISSUE

The issue is whether the local department's removal of the Appellant from the TCA program because she failed to attend a work activity appointment was correct.

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibit offered by the local department:

L.D. Ex. 1: Summary for Appeal Hearing (Summary), which includes the following:

- Summary (pp. 2-5);¹
- Notice of Hearing, dated February 27, 2019 (p. 6);
- Request for Hearing, dated February 19, 2019 (p. 7);
- To Whom It May Concern letter, dated August 1, 2018 (p. 8);
- To Whom It May Concern letter, undated (p. 9);
- Independence Plan, dated August 20, 2018 (p. 10);
- Job Readiness Screening and Assessment, dated August 20, 2018 (pp. 11-12);
- Redetermination Application, dated November 7, 2018 (pp. 13-18);
- Letter to the Appellant, dated January 8, 2019 (pp. 19-31);
- Letter to the Appellant, dated January 9, 2019 (p. 32);
- Letter to the Appellant, dated January 15, 2019 (pp. 33-42);
- Email chain, dated January 16 to 31, 2019 (pp. 43-57);
- A screen shot of two scanned documents, not readable (p. 58);
- Change Report Form, unsigned and undated (pp. 59-60);
- To Whom It May Concern letter, dated December 27, 2018 (p. 61);
- Change Report Form, dated January 22, 2019 (pp. 62-63);
- Work Programs document, dated in January 2019 (pp. 64-66);
- Email, dated March 15, 2019 (pp. 67-68);

¹ The first page is a Table of Contents.

- Database inquiry regarding benefits history (p. 69);
- Narrative, dated January 8 to March 15, 2019 (pp. 70-76);
- FIA [Family Investment Administration]² Action Transmittal #18-16, dated February 20, 2018 (pp. 77-79); and
- COMAR (pp. 80-86).

I admitted the following exhibits offered by the Appellant:

Appellant Ex. 1: OAH Remand Order, dated January 18, 2019;

Appellant Ex. 2: Application/Redetermination for Child Care, dated September 14, 2018;

Appellant Ex. 3: Work Readiness Assessment Questionnaire;

Appellant Ex. 4: Database inquiry related to [REDACTED] /Participation, dated January 15, 2019;

Appellant Ex. 5: [REDACTED] Non-Compliance print-out; and

Appellant Ex. 6: [REDACTED] Work Participation.

Testimony

Ms. [REDACTED] read the Summary into the record and provided additional testimony.

The Appellant testified for herself.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On December 1, 2018, the Appellant applied for TCA benefits for herself and her [REDACTED] minor children.

2. On January 8, 2019, the local department approved the Appellant's application from December 1, 2018, through July 2019.

3. On January 9, 2019, the local department sent a letter to the Appellant at [REDACTED]

[REDACTED] Maryland, advising her of a work activity appointment that had been scheduled on [REDACTED] 2019, at 9:00 a.m.

² The Family Investment Administration "is the central coordinating and directing agency of all public assistance programs in the State[.]" Md. Code Ann., Hum. Servs. § 5-205(a) (2019). It is part of the Department. *Id.* § 5-201.

4. The Appellant did not attend the appointment on [REDACTED] 2019.
5. By letter dated January 15, 2019, the local department informed the Appellant that her household's TCA benefit will end on January 31, 2019.
6. The last TCA payment the Appellant received was for January 2019.

DISCUSSION

General Law

TCA is a component of the Family Investment Program (FIP).³ Md. Code Ann., Hum. Servs. § 5-301(e) (2019). The primary purpose of the FIP is to provide services and financial aid to “support family efforts to achieve and maintain self-sufficiency.” *Id.* § 5-302; *see also* COMAR 07.03.03.01A (“[TCA] provides cash assistance while preparing participants for independence.”). Eligibility criteria are set forth in sections 5-308 and 5-312 of the Human Services Article. In general, they include the following:

- The family must include a minor child or a pregnant individual;
- The applicant or recipient⁴ must reside in the State at the time of application;
- If applicable, the applicant or recipient has to apply for child support services at the time of application or complies with child support enforcement requirements;
- The applicant or recipient engages in Department-requested job search activities or work activity; and
- The applicant or recipient meets all the regulatory criteria for participation.⁵

Md. Code Ann., Hum. Servs. §§ 5-308(a), 5-312 (2019).

³ The FIP is part of the Department. Md. Code Ann., Hum. Serv. § 5-201 (2019).

⁴ A “recipient” is “an individual in an active FIP assistance unit.” COMAR 07.03.03.02B(35). An “assistance unit” is “a group of eligible individuals living together for whom cash assistance has been authorized.” COMAR 07.03.03.02B(8).

⁵ The regulatory requirements are found at COMAR 07.03.03.07, .07-1, .10, and .11.

Summary of the Parties' Testimonial Evidence

The local department

Ms. [REDACTED] testified by reading the Summary into the record. According to the local department, it restored the Appellant's eligibility for TCA benefits in January 2019 because she had previously been removed from the program without the local department providing her an exemption from work activity based on [REDACTED]. The Summary indicates the exemption was applied from December 2018 through January 15, 2019.

In regard to the current removal action, Ms. [REDACTED] explained the local department notified the Appellant to attend an appointment on [REDACTED] 2019, “[i]n an attempt to complete the assessment following the 30-day [homelessness] exemption.” The notice was sent to the “mailing address on file[:]” [REDACTED] MD[.]” Ms. [REDACTED] testified the Appellant failed to attend the appointment and, [REDACTED]—[REDACTED] 2019—the local department notified the Appellant her TCA benefits would end on January 31, 2019.

According to the Summary, Ms. [REDACTED] explained to the local department that the Appellant did not attend the [REDACTED] appointment because the local department mailed the notice of that appointment to an address at which the Appellant no longer resided or received mail. The Summary also indicates Ms. [REDACTED] explained the Appellant had listed [REDACTED] [REDACTED] on a November 2018 application she submitted to the local department for the Food Supplement Program. Ms. [REDACTED] indicated in the Summary that she could not find any documentation of a change in address in the local department's records before the appointment on [REDACTED] 2019.

During cross-examination, Ms. [REDACTED] agreed the local department's notice about the [REDACTED] appointment was mailed to the Appellant at [REDACTED] on January 9, 2019. The notice states: “You have been scheduled for work activity appt [sic] [REDACTED] '19 @ 9 a.m.

You must also go to child support and apply for all children. If you fail to appear for appt [sic] then TCA benefits will be stopped." L.D. Ex. 1 at page 32.

Ms. [REDACTED] was shown Appellant Ex. 2, an application for child care assistance that was signed by the Appellant on September 14, 2018. Ms. [REDACTED] "believe[d]" a copy was in the local department's records, but she "could not recall off the top of my head." The application lists the Appellant's home and mailing address as [REDACTED] MD.

Ms. [REDACTED] was shown Appellant Ex. 3, an on-line work readiness questionnaire. Ms. [REDACTED] explained the questionnaire is used to "determine readiness to participate in work activity." Ms. [REDACTED] agreed the questionnaire is dated December 6, 2018,⁶ and testified she had not seen it before the hearing. Page one of the questionnaire lists the Appellant's residential and mailing address as [REDACTED] MD. The questionnaire also notes the Appellant is "staying in [REDACTED]" Ms. [REDACTED] also agreed the questionnaire describes the Appellant as experiencing worry, concern, depression, fearfulness, nervousness and anxiety, and tiredness and exhaustion at different levels of frequency and of having some limitations in the area of learning.

When asked the purpose of the [REDACTED] work assessment, Ms. [REDACTED] testified: "[To be] reassessed for [REDACTED] .. because it was not completed previous to when [the] case was re-pended on December 1. The notice [was] completed so the Appellant could be reassessed [for the] barrier of [REDACTED] and to comply with child support as well."

In the local department's narration on [REDACTED], it used code 566 to describe the Appellant's TCA status. Code 566 is a closing code used "when the head of household recipient quits a job or reduces work hours without good cause while receiving TCA." Ms. [REDACTED] agreed the local department did not investigate why the Appellant did not attend the [REDACTED]

⁶ The questionnaire is not signed or dated. However, the following appears at the bottom of each page: "<https://owraassessment.dhr.state.md.us/> [REDACTED]" "OWRA" is an abbreviation for Online Work Readiness Assessment.

appointment before it removed her from the TCA program. Ms. [REDACTED] was “not sure” whether the Appellant was offered a conciliation period; she acknowledged that neither Appellant Ex. 4 nor Ex. 5 showed a conciliation period had been offered. Ms. [REDACTED] agreed that had a conciliation period been offered it would have appeared on those exhibits.

Ms. [REDACTED] acknowledged a mistake in the related to the Appellant’s [REDACTED] status. The Summary states: “The [REDACTED] was entered for the dates 12/1/18 through [REDACTED] 19.” A closure document from the [REDACTED] lists the same OTU code and start and end dates. Ms. [REDACTED] agreed OTU is code for an “appeal” and OTF is code for a “family crisis.” Ms. [REDACTED] agreed the Appellant was not given a work exemption for a family crisis.

The Appellant

The Appellant testified she and her [REDACTED] daughters live in [REDACTED] at [REDACTED]

[REDACTED] She testified she has used the [REDACTED] as her mailing address since July 21, 2018.

The Appellant also testified she did not receive the local department’s notice of the [REDACTED] appointment that was mailed to [REDACTED] a previous address.

The Appellant testified “someone in work activity” administered the Work Readiness Assessment Questionnaire (Appellant Ex. 3) to her. She testified the person sat at a computer, asked her questions, and recorded her answers on the questionnaire. In regard to the application for child care (Appellant Ex. 2), the Appellant testified she submitted it to the local department “when [the local department] first got me to do work activity.”

The Appellant testified she learned she had been removed from the TCA program by email. As noted above, the removal letter is dated January 15, 2019. The Appellant testified she went to the local department on January 22, 2019, at Ms. [REDACTED] suggestion, and explained to “the lady at the information desk” that she missed the [REDACTED] appointment because she did not know about it. The Appellant testified she also spoke to someone else at the local

department who said “something about child support.” According to the Appellant, she went to “child support services” on the same day and completed an application.

The Appellant testified the local department did not offer her a “good cause” option, provide any resources for alternative housing, or talked to her about an exemption from work activity based on health reasons. She testified the last TCA benefit she received was for the month of January 2019.

The Parties’ Arguments

The local department

The local department argued a current corrective action has been put in place because the local department agreed it sent the notice of the [REDACTED] appointment to an incorrect address. According to the local department, the only issue for this hearing is whether the Appellant complied with her child support obligations under the requirements of the TCA program.

The Appellant

The Appellant argued the local department’s action is unlawful for a number of reasons. First, argues the Appellant, there was no legal basis to close her TCA case. The Appellant argues COMAR 07.03.03.04—the only legal authority mentioned in the local department’s notice of action—addresses only the application process; it does not “instruct how to close a case.” The Appellant also notes the Summary and testimony identified the missed appointment as the reason for the local department’s action. The Appellant argues COMAR does not authorize closure because “someone misses a meeting.” The Appellant argues non-compliance with child support obligations is not properly before me because the notice of action does not mention that as a reason for the local department’s action.

Second, the Appellant argues the local department cannot rely on her failure to attend the [REDACTED] appointment as the reason for its action because the local department mailed the notice of the appointment to a wrong address. The Appellant notes the local department admitted that error.

Third, the Appellant argues the local department unlawfully failed to provide a conciliation period for the Appellant's non-compliance with work activity. According to this argument, the actual reason for the action is revealed in the local department's [REDACTED] narration that lists code 566 as the basis for removing the Appellant from the TCA program. Code 566 designates a TCA case was closed for a failure to comply with work activity without good cause. The Appellant cites to COMAR 07.03.03.03.19 as requiring a local department to provide a conciliation period. She also relies on Appellant Exs. 4 and 5 as proof that no conciliation period was offered.

Fourth, the Appellant argues the local department failed to comply with the "good cause" requirement addressed in COMAR 07.03.03.07-1 and Action Transmittal 18-16. According to this argument, the Appellant's [REDACTED] status was a good cause exemption from work activity. The Appellant also argues the local department failed to provide her with services and supports, as required under COMAR 07.03.03.04C, to help her overcome mental health and cognitive barriers to engagement in work activities, as identified in her Work Readiness Assessment Questionnaire.

Burden of Proof

COMAR 07.01.04 determines which party has the burden of proof. At the time of the local department's action, the Appellant was a recipient of TCA. Under COMAR 07.01.04.03B and 07.01.04.12B, the local department has the burden of proof when a recipient requests a hearing. COMAR 07.01.04.12C(2) provides that the standard of proof is by a preponderance of

the evidence. Accordingly, I find the local department has the burden of proof to prove by a preponderance of the evidence that the Appellant's removal from the TCA program was correct. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so," when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

Analysis

Some factual issues

Some material facts are not disputed. The Appellant applied for TCA on December 1, 2018. By letter dated January 8, 2019, she and her [REDACTED] minor children were approved for benefits. The local set December 1, 2018, through July 31, 2019, as the household's period of eligibility.

By letter dated January 15, 2019, the local department notified the Appellant of her pending removal from the TCA program on January 31, 2019, because she "failed to appear for your work activity assessment appointment." The local department relied on COMAR 07.03.03.04 as authority for its action.

By letter mailed to [REDACTED] Maryland, on January 9, 2019, the local department notified the Appellant of the following:

WE HAVE SCHEDULED AN APPOINTMENT FOR YOU ON [REDACTED] 2019
AT 9:00 AM.

PLEASE BRING THE FOLLOWING WITH YOU TO YOUR APPOINT-
MENT: [Blank]

YOU HAVE BEEN SCHEDULED FOR WORK ACTIVITY APPT [REDACTED] /19
@ 9AM. YOU MUST ALSO GO TO CHILD SUPPORT AND APPLY FOR
ALL CHILDREN. IF YOU FAIL TO APPEAR FOR APPT THEN TCA
BENEFITS WILL BE STOPPED.

IF YOU CANNOT KEEP THIS APPOINTMENT, PLEASE CALL YOUR CASE MANAGER AT THE NUMBER LISTED ABOVE.

L.D. Ex.1 at page 32 (Emphasis in the original).

The Appellant testified [REDACTED] was not her mailing address in January 2019. She testified she did not receive the notice of the appointment. The Appellant admits she did not attend the [REDACTED] appointment.

The local department contends in the Summary: "In reviewing the FS [Food Supplement Program] Redet [redetermination] packet no address change [was] noted, other verification or narrative found showing [the Appellant] reported a change of address during this period." The Summary also indicates: "Although [the Appellant] reported a change of address, it occurred after the missed appointment. There was not verification found showing address change was completed prior to [REDACTED] 2019."

Despite the local department's denial in the Summary that the Appellant did not change her mailing address before the [REDACTED] appointment, Ms. [REDACTED] changed course at the hearing and agreed the local department mailed the notice to the "wrong address" because it had the Appellant's new mailing address "available to us before the letter was sent." This concession seemingly was based on Appellant Exs. 2 and 3, which I further discuss below.

Does the Notice of Action contain a proper legal basis for the Appellant's removal from the TCA program?

The Notice of Action cites to COMAR 07.03.03.04 as the legal basis for its removal action. It does not cite to any specific part of the regulation.

Under COMAR 07.03.03.05G, a local department must give written notice of the termination of TCA to a recipient. The notice must provide "[t]he regulation supporting the action[.]" COMAR 07.03.03.05G(2)(b).

COMAR 07.03.03.04 addresses the application process for FIP benefits, including TCA. It contains six subparts (A-F) that address: (A) the right to file an application; (B) technical requirements of the application and the local department's obligation to advise and notify the applicant about certain things; (C) the local department's general obligation to assess an applicant's circumstances and needs and provide services and supports; (D) the responsibility of the applicant and local department to develop a Family Independence Plan, which, among other things, specifies work activities in which a recipient "shall" participate; (E) the local department's obligation to verify both specific information and any "questionable information" about household members; and (F) the obligation of the local department to maintain a proper case record.

It might be helpful at this juncture to address an unusual circumstance of this case. The Appellant's most recent TCA-related involvement with the local department includes an OAH remand order (RO) issued on January 18, 2019. The parties jointly requested the RO based on an agreement they had reached just prior to an earlier merits hearing. According to the RO, a hearing had been scheduled to address the Appellant's removal from the TCA program in November 2018 based on non-compliance with work activity in October 2018. The RO instructed the local department to do the following: rescind a sanction; re-instate the Appellant to the TCA program; and pay the Appellant TCA benefits from December 2018 to January 2019.

During the above events, the Appellant filed an application for TCA benefits on December 1, 2018. On January 8, 2019, the local department approved benefits through July 2019. However, on January 15, 2019, it removed the Appellant from the TCA program because she failed to attend the work activity appointment. According to Ms. [REDACTED] that appointment was to reassess [REDACTED] to determine whether it was a barrier to the Appellant's participation in work activity, although the notice itself did not explain the reason for the appointment.

The Appellant argues Regulation .04 does not “instruct [a local department] how to close a case.” The Appellant argues, therefore, the local department had no legal authority the Appellant from the TCA program because she “misse[d] a meeting.” I am not persuaded by this argument because I determine the local department has implicit authority to remove a recipient from the TCA program who fails to cooperate with a reasonable request designed to assess eligibility during the application process.

COMAR 07.03.03.04E obligates a local department to verify eligibility for the TCA program. Participation in work activity is an eligibility requirement. COMAR 07.03.03.07-1A. With some exceptions: “[W]hen an adult recipient is found to be in noncompliance with program requirements, the . . . [e]ntire assistance unit is ineligible[.]” COMAR 07.03.03.19B. A local department’s obligation to verify eligibility for benefits from the FIP is meaningless without authority to remove a recipient who fails to cooperate with the reasonable exercise of that obligation. A lack of enforcement authority would also expose the TCA program to consumer exploitation. For these reasons, I find the local department’s removal authority is implicit in the obligation created by the regulation.

Did the local department knowingly send the notice of the [REDACTED] appointment to the Appellant at an incorrect address?

As discussed above, Ms. [REDACTED] in her closing argument, admitted the local department mailed the notice to the Appellant to an incorrect address. The Appellant defended against the local department’s action based on not having received the notice of the appointment. For the reasons discussed below, I am not persuaded by the complete record before me, that the local department actually knew, or had reason to know, the Appellant timely changed her mailing address from [REDACTED] where the notice was mailed, to [REDACTED] despite Ms. [REDACTED] admission.

The Appellant testified she lived with her children in an [REDACTED] at [REDACTED] [REDACTED] in January 2019. She testified they had lived there since July 21, 2018. A letter from the [REDACTED] corroborates that testimony. She also testified that [REDACTED] has been her mailing address since July 2018. The record contains insufficient corroboration of that testimony.

The issue here is not whether the Appellant began using [REDACTED] as her mailing address in July 2018. The issue is whether the Appellant notified the local department she changed her mailing address before January 2019.

The Appellant testified she submitted an Application/Redetermination for Child Care (Appellant Ex. 2) to the local department. The application contains the Appellant's signature and is dated in September 2018. It lists [REDACTED] as the Appellant's home and mailing address. In addition, the Appellant testified "someone in the work activity" completed a Work Readiness Assessment Questionnaire (Appellant Ex. 3) with her. She did not testify who helped her or when. The Appellant's signature is not on the questionnaire, and it is not dated, although December 6, 2018, appears at the bottom of each page adjacent to an email address at which the questionnaire can be located⁷. The questionnaire lists [REDACTED] as the Appellant's home and mailing address.

In regard to the Appellant's trustworthiness as a source of information about her mailing address in January 2019, her testimony is directly contradicted by her sworn statement on a different document in the record. The Appellant submitted a Case Information Form for a re-determination of her eligibility for the Food Supplement Program to the local department. She

⁷ See footnote 6.

signed and dated that form under penalties of perjury on November 7, 2018.⁸ On the form, the Appellant swore her mailing address was [REDACTED]. That sworn statement directly contradicts her sworn statement at the hearing, and Appellant Ex. 2, that [REDACTED] became her mailing address since July 2018. The Appellant did not explain this contradiction at the hearing. Accordingly, based on this direct contradiction between the Appellant's sworn statements, I find her not to be a trustworthy source of information about her mailing address in January 2019.

In regard to Appellant Ex. 3, I emphasize there is no date directly on the document; it is not signed by the Appellant; it is not date-stamped by the local department; and Ms. [REDACTED] credibly testified she had not seen it before the hearing.⁹ Furthermore, according to the Appellant's testimony, the questionnaire was completed by someone whom she could not identify. As discussed above, I have found the Appellant was not a reliable source of information about her mailing address.

Finally, there is only one Change Report Form in the record. Although it lists [REDACTED] as a "new address," it is signed and dated by the Appellant on January 22, 2019, after the date on which the work activity appointment had been scheduled. There is no other Change Report Form in the record.

⁸ The signature page of the application contains the following:

I understand it is important to give true information.
I know that if I lie on this form . . . I am breaking the law.

I also certify, under penalty of perjury, that by signing my name below, all persons for whom I am applying are U.S. citizens or lawfully admitted immigrants. When I sign on the line below, it means that the information on this form is true, correct and complete as far as I know.

L.D. Ex. 1 at page 18.

⁹ Prior to the hearing, Ms. [REDACTED] researched this case by reviewing the local department's databases. She drafted the Summary.

For all the reasons discussed above, and despite Ms. [REDACTED] admission during the local department's closing argument, I do not find that the Appellant changed her mailing address of record with the local department before the [REDACTED] appointment.

Did the local department impermissibly fail to offer the Appellant a conciliation period?

COMAR 07.03.03.19 regulates conciliation, sanction, and other penalties in the FIP. The pertinent parts of Regulation .19 state as follows:

A. Conciliation Process

- (1) Conciliation and sanction are applied to recipient assistance units only.
- (2) The local department shall allow one 30-day conciliation period for each recipient's failure to comply with requirements for each of the following:
 - (a) Work as specified in Regulation .07-1 of this chapter. . . .
 - (3) During the 30-day period, the case manager shall advise the individual of the noncompliance and help the individual comply by:
 - (a) Sending the individual a letter to schedule a conciliation conference;
 - (b) Following up on the letter through telephone contact or personal contact as feasible;
 - (c) Investigating with the individual any barriers or good cause reasons for the noncompliance; and
 - (d) Assisting the individual in resolving the barriers to compliance.

B. Sanctions for noncompliance.

- (1) Except as provided in Regulation .09D and E of this chapter for substance abuse, when an adult recipient is found to be in noncompliance with program requirements, the:
 - (a) Entire assistance unit is ineligible[.]

The local department conceded it did not apply a conciliation period to the Appellant's failure to attend the [REDACTED] appointment. It argues conciliation does not apply to this situation because the Appellant was not in a work activity. Instead, explained the local department, the Appellant was in a "lull" pending an assessment of homelessness as a barrier to participation in work activity. I am not persuaded by this argument.

COMAR 07.03.03.19A(2) lists a failure to participate in "work as specified in [COMAR 07.03.03].07-1" as within the scope of conciliation. Under COMAR 07.03.03.07-1L, a local department "shall follow conciliation and sanction procedures as described in Regulation .19 of

this chapter for all individuals who are not in compliance with work activity requirements.” COMAR 07.03.03.07-1B states that a “[f]ailure of an adult to cooperate in a work requirement without good cause” allows for removal from the TCA program.

The Appellant’s defense also includes her homeless status as good cause for not participating in work activity. COMAR 07.03.03.07-1I(1)(3) lists “[a] family crisis that threatens normal family functioning” as good cause not to participate in work activity. Departmental policy “considers a housing crisis and/or homelessness to be a family crisis and grounds for good cause from the work requirements.” FIA Action Transmittal #18-16.

Not cited by either party, but directly relevant to this analysis, is section 5-312 of the Human Services Article, which states:

- (e) *Noncompliance.* — (1) The Secretary shall adopt regulations that establish a schedule of reductions and terminations of temporary cash assistance for noncompliance with FIP requirements.
 - (2)(i) If a recipient is found to be in noncompliance with the FIP requirements, a caseworker shall investigate the reasons for noncompliance.
 - (ii) The investigation, to the extent resources allow, shall include personal contact with the family of the recipient.
 - (3) The Secretary may not reduce or terminate temporary cash assistance to a family until 30 days after the day on which the first written notice of noncompliance was sent to the recipient.
 - (4) For noncompliance with a FIP requirement other than a work activity, temporary cash assistance shall resume on compliance with the FIP requirement.
 - (5) For noncompliance with a work activity, temporary cash assistance shall resume in the following manner:
 - (i) for the first instance of noncompliance, temporary cash assistance shall resume immediately upon compliance[.]

Md. Code Ann., Hum. Servs. § 5-312(e) (2019).

The local department’s argument that the [REDACTED] appointment was outside the scope of conciliation because it did not involve a work activity ignores the purpose of the appointment: to assess whether the Appellant’s [REDACTED] was a barrier to participation in work activity. In this circumstance, the appointment cannot be separated from work activity, and it was not treated separately by the local department. When it closed the Appellant’s TCA case,

the local department narrative on January 15, 2019, used code 566. Code 566 is used when “the head of household recipient quits a job or reduces work hours without good cause while receiving TCA.” The local department’s use of this code is consistent with how the local department described the appointment in its [REDACTED] notice to the Appellant: a “work activity appointment.”

Finally, regardless of the characterization of the [REDACTED] appointment, the Maryland legislature directs a local department to handle “termination of [TCA] for noncompliance with FIP requirements” in a clear and specific manner. The local department “may not . . . terminate [TCA] to a family until 30 days after the day on which the first written notice of noncompliance was sent to the recipient.” That is what a conciliation period is for. The local department violated this statute by its January 15, 2019, removal of the Appellant from the TCA program.

Accordingly, I find the local department impermissibly failed to conciliate the Appellant’s failure to attend the [REDACTED] appointment. That failure violated its statutory obligation. It also failed to comply with its own regulations, a failure that prejudiced the Appellant.¹⁰ Based on this, the local department’s action may not stand.

Did the local department fail to comply with COMAR 07.03.03.07-1 and FIA Action Transmittal 18-16 by not applying the good cause exemption from the work activity requirement to the Appellant and COMAR 07.03.03.04C by not providing any services or supports to help the Appellant overcome other barriers to her access of work activities?

As discussed above, COMAR 07.03.03.07-1I(1)(3) and FIA Action Transmittal 18-16 establish homelessness as good cause for non-participation in the TCA work requirement. There is no question that the local department was aware the Appellant was [REDACTED] in January 2019. FIA Transmittal 18-16 requires a case manager to assess whether a TCA recipient’s non-participation in work activity is due to “[l]iving in an [REDACTED]” The Department’s

¹⁰ See *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 503-505 (2003). *Pollock* held that an administrative agency must comply with a written agency policy that grants procedural rights to an individual when the violation of the policy prejudices the individual.

policy grants up to sixty-days of a good cause grace period during which a local department must help a [REDACTED] family with referrals and resources designed to remove the homeless barrier to participation in work activity. I find the local department did not follow this written policy, and I also find this failure prejudiced the Appellant's household. Based on this, the local department's action may not stand. *See Pollock*, 374 Md. at 503-504.¹¹

CONCLUSION OF LAW

I conclude that the local department's removal of the Appellant from the TCA program by letter dated January 15, 2019, was incorrect based on its failure to offer the Appellant a conciliation period and to evaluate good cause for not attending the work activity appointment. Md. Code Ann. Hum. Servs. § 5-312(e) (2019); *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 503-505 (2003); COMAR 07.03.03.19; COMAR 07.03.03.07-1I(1)(3); FIA Action Transmittal 18-16.

ORDER

I ORDER the following:

1. The [REDACTED] decision to remove the Appellant from the TCA program by letter dated January 15, 2019, is REVERSED.
2. The [REDACTED] shall reinstate TCA benefits to the Appellant's household beginning on February 1, 2019.
3. The [REDACTED] shall advise the OAH of its compliance with this order within ten (10) days of the date of this decision.

May 21, 2019
Date Decision Mailed

[REDACTED]
Michael D. Carlis
Administrative Law Judge

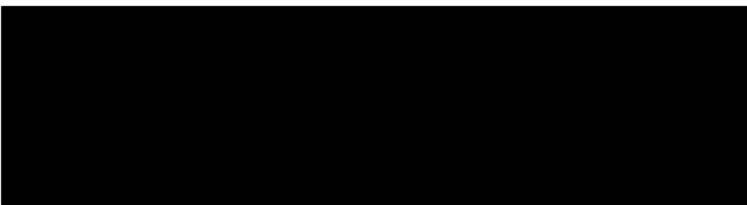
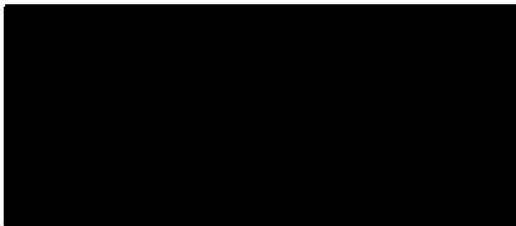
¹¹ I find the evidence relevant to any additional barriers, such as mental health and learning ability, too weak even to rise to the level of obligating the local department to investigating further or to offer services and resources.

REVIEW RIGHTS

A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. The petition must be filed within thirty (30) days of the date of this decision. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

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