

AWI Order No. 2004-01-00806 Date: ~~2-27-04~~

FILED

Agency for Workforce Innovation

AGENCY CLERK

Veronica Moss, Agency Clerk

By:



AGENCY FOR WORKFORCE INNOVATION

An Executive Agency of the State of Florida

In Re: ROYE MELLO,
Appellant,

vs.

AWI Case No.: 2004-01-00806

PASCO HERNANDO JOBS AND
EDUCATION PARTNERSHIP
REGIONAL BOARD, INC.,
Appellee.

**AGENCY DECISION ON APPEAL FROM REGIONAL WORKFORCE BOARD
DECISION**

BACKGROUND

This matter has come before the undersigned pursuant to the Workforce Investment Act of 1998 (WIA), as codified at 29 United States Code (USC), sections 2802 et seq., the applicable federal regulations as contained in 20 Code of Federal Regulations (CFR), part 652 et seq., and the Florida Workforce Innovation Act, as contained in Chapter 445, Florida Statutes.

The Workforce Investment Act is the federal employment and training initiative, designed to increase occupational skills, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the national economy. The program is implemented through the federal funding provided for the workforce systems in the states. The Florida legislation parallel to the federal program is known as the Workforce Innovation Act.

WORKFORCE ENTITIES AND THE PARTIES

The Agency for Workforce Innovation (AWI) as created by Section 20.50, Florida Statutes, is the grant recipient of federal workforce funds and the state entity responsible for the administration of workforce policy as established by Workforce Florida, Inc.

Pasco Hernando Jobs and Education Partnership Regional Board, Inc., (PHJEPRB), is the regional workforce board (RWB) for the state Region 16, chartered by Workforce Florida, Inc., as required by Section 445.004 (11), Florida Statutes. The local boards are responsible for the development of the local workforce plan and generally coordinating workforce activities. The workforce services are provided through “One-Stop” centers located throughout the state, in cooperation with “Partner” entities, which include required partners that carry out various federal programs (20 CFR §662.200), and additional optional partners. The One-Stop centers are designed to provide comprehensive employment and training and human services within the same location. The One-Stop operators coordinate services within the local centers, as provided in 20 CFR §662.400 (c). PHJEPRB operates three One-Stop centers within its workforce system. PHJEPRB has the authority to designate One Stop center operators in accordance with Section 445.009(2)(b), Florida Statutes, which requires that such designated entities be eligible to provide services under any state or federal workforce program that is a mandatory or discretionary partner in the region’s One-Stop delivery system.

Workforce Florida, Inc., (WFI), created by Section 445.004, Florida Statutes, is the workforce policy organization for Florida, with oversight responsibility over AWI and the RWBs.

JURISDICTION and BACKGROUND

The WIA section 181 (c) and applicable regulations in 20 CFR, part 667, subpart F, require that the State and each local area adopt a procedure for dealing with grievances and complaints. As described in 20 CFR §667.600 (b) (1), the local procedures are required to accommodate the grievances and complaints of participants and other interested parties affected by the local Workforce Investment System. Mr. Mello filed a grievance at the local level contesting the level of service he received from PHJEPRB and the various partners operating within and outside of the Region 16 one-stop system. That grievance was sent to the State for review and a decision was rendered on September 30, 2003 remanding the matter back to the PHJEPRB to convene an impartial body to hear the grievance in accordance with its grievance procedures. A three-member panel was convened on November 14, 2003 and a decision was rendered on November 19, 2003. The Notice of Decision made the following Findings and Recommendations:

FINDINGS

- We the impartial body carefully reviewed the information you presented at the hearing and it is our opinion that the information showed no evidence of you being denied services or benefits under Workforce Investment Act of 1998 (WIA).
- We the impartial body find that staff generosity may have contributed to your unrealistic expectations of services provided by the One-Stop.
- We the impartial body find that in your last statement, you want someone to work with you consistently to help with the bureaucracy in the One-Stop and help getting your business started such as grants and referral of customers is not consistent with the goals of the One-Stop and is unrealistic.
- We the impartial body recognize the desire for staff to go above and beyond, but this contributed to your unrealistic expectations of allowable services provided through the Welfare to Work Program (WTW) and the Welfare Transition Program (WTP).
- We the impartial body find that the career Central and Board Staff provided ample and adequate support during your enrollment in the WTW and WTP programs.

RECOMMENDATIONS

- We the impartial body recommend Mr. Mello enroll in one of the programs to which he is eligible and follow the program guidelines and requirements.
- The purpose of One-Stop programs is to provide minimal services leading to economic self-sufficiency. Mr. Mello should set realistic goals for himself and reasonable expectations form the One-Stop programs.
- The portion of Orientations addressing recipient responsibilities may need to be strengthened.
- One-Stop staff may need additional training on recognizing situations in which the opportunity to grieve should be offered and situations where assistance in the grievance process is needed.
- Mr. Mello should utilize the resource room and the other resources available to him and the rest of the public at Career Central.

Mr. Mello appealed the Notice of Decision the State. The review of the Notice of Decision is being conducted by the AWI in its review capacity, as provided in rule chapter 60BB-1, Florida Administrative Code.

The record submitted by the parties have been designated as follows and will be cited as (R. – page number):

1. Request for Review by AWI from Mr. Mello000001 – 000002
2. AWI’s Formal Notification and Timeline.....000003 – 000006
3. Mr. Mello’s Argument and Documents000007 – 000017
4. PHJEPRB’s Argument and Documents.....000018 – 000195

AGENCY FINDINGS OF FACT

1. Mr. Mello sought employment services through the Region 16 one-stop workforce system beginning in January or February of 1999 and these services continued for almost five (5) years (R. 12, 66, 74, 93)

2. Mr. Mello alleges that he has been denied proper services and benefits under federal and state laws and rules. (R. 12)
3. Vocational Rehabilitation has provided Mr. Mello with assistance since the fall of 2001 and has provided job service assistance in the field of real estate. (R. 11)
4. In a letter dated November 12, 2002, the Gulf Coast Community Care advises that it has exhausted its resources in obtaining employment for Mr. Mello. Mr. Mello was provided 3 months of intensive service with an employment specialist focusing on jobs in the real estate related field. (R. 16)
5. Through the assistance of PHJEPRB, its partners, and other entities, Mr. Mello was referred for numerous job vacancies and even refused a job referral. PHJEPRB provided Mr. Mello with assistance to be self-employed with a business called Home Detective. Being self-employed, Mr. Mello was able to find some work. (R. 75, 76, 82, 106-107, 140-144 or PHJEPRB exhibit #169)
6. Mr. Mello complains of not having an assigned and consistent caseworker and not receiving intensive case management. (R. 67, 71)
7. The records of PHJEPRB does not have Mr. Mello signed up for the Workforce Investment Act program because he is not job registered. Mr. Mello is not currently enrolled in any program administered by PHJEPRB and therefore does not have a case manager. Mr. Mello did attend orientation for the WIA program, but did not show up when the assigned case manager asked him to come in for services (R. 94, 115)

8. The resource room is available to Mr. Mello as any other citizen. PHJEPRB does not have the resources to assist Mr. Mello with grants and loans for his small business. (R. 116).
9. Mr. Mello has been enrolled in Welfare to Work program and welfare transition program. (R. 94)
10. The Project Whatever it Takes is a welfare to work program specifically designed for people who need intensive case management and support in order to become self sustained. Mr. Mello enrolled in this program in December 2002 and the program ended for Mr. Mello on June 30, 2003 with no sustained employment. (R. 98)
11. In a letter dated January 27, 2003, the PHJEPRB notes it has provided the following support in the Project Whatever it Takes: engine replace for Mr. Mello's truck; payment for fictitious name registration for Mr. Mello's business; payment for three occupational licenses; payment for installation of a business line in Mr. Mello's residence; payment for the estimated cost of one years liability insurance. (R. 15).
12. Mr. Mello had a working relationship with the welfare transition program from December 2000 to May 2002 and the relationship has been riddled with non-compliance and failure to participate or perform the required activities. (R. 97, 126-127).
13. In the welfare transition program, participants are to develop Individual Responsibility Plan. These plans require participants to do job search, attend job Club and show up for community work service. Mr. Mello never job registered so the PHJEPRB was not able to make job referrals. The PHJEPRB must rely on Mr.

Mello's willingness to go to interviews and follow leads suggested by the PHJEPRB.
(R. 100-101)

14. The PHJEPRB does not find jobs for someone but provides support so that the individual can find his or her own job. (R. 104).
15. November 12, 2002, PHJEPRB offers to pay the fee of a private employment agency if they could place Mr. Mello in a job. (R. 106)
16. February 20, 2002, Mr. Mello refuses to follow a job lead as branch manager for Labor Ready stating that he went to school for real estate and that is the type of job he wanted. (R. 106)
17. Mr. Mello received food stamps, up front diversion; court ordered non-custodial training and support services, vocational rehabilitation and training. (R.101).
18. Mr. Mello wants assistance to obtain funding or a grant for his business capital and pay worker's compensation. (R. 113-114)
19. Mr. Mello received monetary assistance totaling more than \$8,529.67 through the services of PHJEPRB and its partners, and referrals by PHJEPRB between January 1999 and July 2003. Much of this financial assistance was for Mr. Mello's self-employment start-up costs. (R. 75, 86, 95, 97, 98, 126-127)
20. Mr. Mello was notified on numerous occasions that he had failed to comply with requirements for obtaining assistance, such as attending appointments, submitting documentation, completing training, and following through on job leads. Mr. Mello had been sanctioned many times. Mr. Mello was also rendered ineligible for cash assistance for twelve (12) months for intentional program violations. (R. 93-94, 95, 97, 106)

21. Mr. Mello had an Individual Responsibility Plan (IRP). This plan required Mr. Mello to do job searches, attend Job Club, and perform community work experience assignments. Mr. Mello could not perform the above responsibilities because he failed to “job register,” which must be completed as part of the IRP. (R. 100, 108)

CONCLUSIONS OF LAW

22. According to 20 CFR §652, each State’s labor exchange system must have the capacity for the following with respect to jobseekers: (a) assist jobseekers in finding employment, and (b) facilitate the match between jobseekers and employers. Part 20 CFR §662 describes the one-stop system under Title I of WIA, and contains the minimum requirements for service delivery. Among those requirements are the provision of the identified core services of WIA §134(d)(2), and access to the other activities and programs carried out under the partners’ authorizing laws. Some of the core services include: eligibility determinations for WIA; outreach, intake and orientation; initial assessment of skills; job search and placement activities; job vacancy listings; welfare to work activities; follow up services, including counseling regarding the workplace.
23. Pursuant to 20 CFR §663.200, intensive services can be provided to adults or dislocated workers who are unemployed and have received at least one core service and are unable to obtain employment. Pursuant to 20 CFR §663.240, intensive services involve the development of an individual employment plan before the individual may receive training services.
24. Chapter 445, Florida Statutes, also outlines the types of services that are to be performed through the workforce system. Section 445.007, Florida Statutes, requires

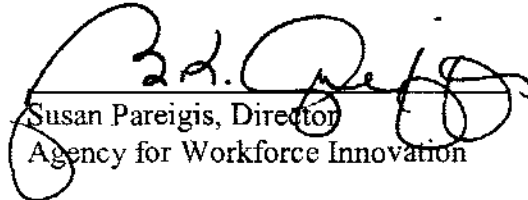
the regional boards to oversee the one-stop delivery system in the local area. Pursuant to Section 445.009, Florida Statutes, the one-stop delivery system provides such services as: job search, referral and placement, career counseling and educational planning, support services, employability skills training, temporary income and technical training.

25. The record shows that the region provided the core and intensive services to Mr. Mello. Even Mr. Mello indicates and acknowledges that he received training and other services through PHJEPRB, its partners. Mr Mello received multiple job referrals and leads by PHJEPRB. Mr. Mello received a variety of services under many programs such as Non-Custodial Parent Employment Program, Vocational Rehabilitation services, welfare transition, Welfare to Work, food stamps, and private employment services.
26. The record also shows that Mr. Mello received intensive case management services albeit it may not have been with a consistent case manager as he wished. However, the record also shows that Mr. Mello's cooperation and compliance in the various programs was not consistent.
27. None of the aforementioned laws or regulations contains any requirement that local workforce boards or the states guarantee the satisfaction or the success of the services given to a participant. Because Mr. Mello has not identified any specific act or omission on the part of PHJEPRB or its partners, which violated any specific requirement, and no such violation is evident from a review of the record and the relevant legal provisions.

WHEREFORE, the undersigned finds:

Upon the review of the record on appeal, it is hereby found that the impartial hearing panel's findings within the Notice of Decision regarding the level of service or benefits provided by the PHJEPRB is supported by competent substantial evidence.

DONE and ORDERED, this 27th day of February 2004, in Tallahassee, Florida.


Susan Pareigis, Director
Agency for Workforce Innovation

NOTICE OF RIGHTS TO APPEAL
FEDERAL

This Agency Decision is rendered pursuant to Workforce Investment Act regulation 20 CFR 667.600(c)(4) and Agency for Workforce Innovation rule Chapter 60BB- 1. A party adversely affected by this decision may petition the Secretary of the United States Department of Labor within 60 days of receipt of this decision. Any appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 2000 Constitution Ave., N.W., Frances Perkins Building, Washington, DC 20210, Attention ASET. A copy of the appeal must be simultaneously provided to the ETA Regional Administrator, U. S. Department of Labor, ETA, Atlanta Federal Center, 61 Forsyth Street, S.W., Room 6M12, Atlanta, GA. 30303 and to the AWI, Office of the General Counsel, 107 E. Madison Street, Caldwell Building, MSC # 150 Tallahassee, Fl. 32399-4128.

STATE

THIS DECISION CONSTITUTES FINAL AGENCY ACTION, pursuant to Section 120.68(2), Florida Statutes, Judicial Review of this proceeding maybe instituted by filing a notice of appeal in the district court of appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Such notice of appeal must be filed with the district court of appeals within thirty (30) calendar days of the date this order is filed in the Official of General Counsel, Agency for Workforce Innovation, 107 East Madison Street, MSC #150, Tallahassee, Florida 32399-4128 as indicated in the certification of the Agency Clerk, or further review will be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was provided by U. S. Mail, this 27th day of February 2004, to: Mr. Roye Mello, 17853 Drayton Street, Spring Hill, Florida 34610-000 and Mr. Kenneth W. Russ, Pasco Hernando Jobs and Education Partnership Regional Board, Inc. P.O. Box 15790, Brooksville, Florida 34604



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