

AWI Order No. 2005-04-01010 Date: 7-29-05

FILED

Agency for Workforce Innovation

AGENCY CLERK

Veronica Moss As Agency Clerk

By:



AGENCY FOR WORKFORCE INNOVATION

An Executive Agency of the State of Florida

In Re: MARIA REBECA FARINAS,
Appellant,

vs.

AWI Case No.: 2005-04-01010

SOUTH FLORIDA WORKFORCE,
Appellee.

**FINAL ORDER IN APPEAL FROM REGIONAL
WORKFORCE BOARD DECISION**

PRELIMINARY AND JURISDICTIONAL STATEMENT

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. In the present case, Ms. Farinas filed a grievance at the local level alleging her case was improperly closed and the resulting denial of service from South Florida Workforce (SFW). Because Ms. Farinas was not satisfied with the decision made at the local level, she appealed to the State, as provided in 20 CFR § 667.600 (c) and Rule 60BB-1.006, Florida Administrative Code.

The Workforce Investment Act (WIA) 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.

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

SFW is the RWB for the state Region 23, chartered by WFI, as required by Section 445.004(11), Florida Statutes, and is responsible for initiating state and federal funded workforce development programs in Miami-Dade and Monroe counties. SFW, as a local board, is also 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). SFW operates numerous One Stop centers within its workforce system. SFW 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.

The WIA, section 181(c) and applicable regulations in 20 CFR § 667(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.

The present review is being conducted by AWI in accord with the State's grievance procedures promulgated as rule in Chapter 60BB-1, Florida Administrative Code. The record consists of SFW's

case file on Ms. Farinas and supplemental materials submitted by Ms. Farinas. (Citations to the record will be designated by an "R" followed by a page number.)

FINDINGS OF FACT

Based upon review and consideration of the documentation and written arguments submitted by the parties, the following have been determined to be the relevant facts.

1. In November 1998, Ms. Farinas was laid-off from National Propane. R307.
2. As a result of her lay-off, Ms. Farinas was approved to receive Intensive Services [R308] as a Dislocated Worker. R 295.
3. On August 31, 1999, Ms. Farinas applied for training services through the South Florida Employment and Training Consortium, SFW's administrative entity, with the goal of becoming a Registered Nurse. R308.
4. On November 22, 1999, under the WIA Dislocated Worker program, Ms. Farinas was approved for services that would allow her to seek an Associates Degree in Registered Nursing. R295.
5. On January 4, 2000, Ms. Farinas began classes at Miami-Dade Community College. R294.
6. On November 2, 2000, Ms. Farinas signed a Notice of Responsibilities of WIA Participants To Qualify and Maintain Financial Support. R274. Paragraph 8 of this Notice, in pertinent part, states, "If there are extenuating circumstances and it becomes necessary to take a short-time off, I will do this only with the prior approval of my case manager."
7. On November 11, 2000, Ms. Farinas signed a Notice of the Requirement for Full-Time Status, which also provides that "extenuating circumstances" may enable a student to not attend school full-time, with prior approval from her case manager. R276. Extenuating circumstances are not defined in this Notice.
8. Ms. Farinas is a married mother of four children. R212-216.

9. Ms. Farinas' husband was the sole bread winner for the family while she was attending Miami-Dade Community College. R3.
10. On or about May 7, 2002, Mr. Farinas contracted spinal meningitis. R323.
11. On May 13, 2002, Ms. Farinas contacted her service provider to inform the provider of her inability to "do anything about school while her husband is sick". R101. The case manager left the case in "open status" and advised Ms. Farinas to keep her informed as to when she would be able to resume training. R94.
12. On June 18, 2002, in order to support her family [R96], Ms. Farinas took a job with Mains L. Florida Inc., as a Supported Living Coach. R111.
13. The record reflects that in January 2003, Ms. Farinas' case was "soft exited" due to "no action on case for more than one (1) year". R94. Nothing in the record establishes that Ms. Farinas received notice that her case was being "soft exited" in January 2003.
14. On January 16, 2003, the following entry is contained in Ms. Farinas' case file:

Client came in to see me an (sic) told me that she was very interested in returning to school and that she could give me whatever I need that shows that she was the sole caregiver for her very ill husband during the time that she was not able to attend school. R100.
15. The record contains Local Policy #2003-3 ("LP 2003-3"), whose subject is "Individual Training Accounts (ITAs) Process for WIA Adults and Dislocated Workers." R55-81. The section of LP 2003-3 that deals with participant terminations is located on pages 22 and 23 of that policy. R78-79. This section does not specifically provide that a case can be closed due to "no action on case for more than one (1) year." However, it does describes a circumstance when a case worker may close a case for inactivity "where the participant has been uncooperative and/or the case manager has lost contact with the participant, has been unable to locate the participant, and has been unable to secure any type of response from the participant after repeated attempts by telephone, mail, etc." R79.
16. The record does not support a finding that Ms. Farinas' case worker had lost contact

with Ms. Farinas. Specifically, between June 10, 2002, around the time Ms. Farinas went to work [R96], until January 16, 2003, around the time when her case was closed [R94], the record reflects that Ms. Farinas maintained at least monthly communication with her case worker. R100.

17. LP 2003-3 requires case managers to maintain at least monthly contact with participants and to document appointments in the case notes. R61. There are no case note entries for any times between January 16, 2003 and April 8, 2003. R99. Therefore it cannot be determined what level of contact was maintained between Ms. Farinas and her caseworker during this time period. However, once case entries began being made again on April 8, 2003, a case note provides:

Customer called me and told me that she was going to register for classes for the summer. She says that she is very interested in going back to school. Her husband is better and she says she can focus on school now. She will register and then let me know.

18. It was not until May 20, 2003, that Ms. Farinas was notified by telephone that her case was being closed. R94. Nothing in the record indicates Ms. Farinas received written notice that her case was being closed and/or otherwise advised her of her rights to review of that decision.

19. The record reflects that Ms. Farinas' "exit" date was June 2, 2003. R116.

20. On December 3, 2004, an informal hearing was conducted by SFW wherein it was the recommended as follows:

It is recommended that the customer be allowed to continue her training due to the following reasons:

1. One Stop did not fully explain the outcome resulted (sic) from a case closure. (Exit interview should be implemented).
2. When customer advised One-Stop that her husband was ill the One-Stop allowed the case to remain open. (According to the Center Director, and case manager, WIA does not allow case to remain open unless the customer is affected by the illness). One-Stop did not advise customer that her husband's illness would not be a sufficient reason to keep her case opened. The case remained opened without penalty for non-participation due to husband's illness. R94.

21. Upon the record, it cannot be determined by whom the above recommendation was

made. However, notwithstanding the recommendation, Ms. Farinas' request was denied on the grounds that the "case had been closed and customer cannot reapply for certification because there is a freeze on new training through the Workforce Investment Act Program (WIA)." R93. It also cannot be determined by this record who decided that Ms. Farinas "could not reapply for certification."

22. The original basis for Ms. Farinas' grievance was that her case was improperly closed. R2. Nothing in the record supports a finding that the decision to close Ms. Farinas' was ever reviewed.

23. It is also noted that that the SFW Center Director and Ms. Farinas' case manager were of the opinion that WIA did not allow Ms. Farinas' case to remain open because she was not the individual that was ill. R93. Yet, LP 2003-3 allows in "extreme circumstances," for discontinuation of training if a participant needs to do so in order to provide emergency care for an immediate family member. R62. This policy is not consistent with the SFW Center Director's and Ms. Farinas' case manager's opinions that WIA did not allow Ms. Farinas' case to remain open unless she was the individual that was ill. R94. Additionally, based upon the finding of fact in paragraph 11, *supra*, Ms. Farinas may have had "prior approval" from her case manager to not attend classes while her husband's was ill. *See also* R96-97.

24. Although LP #2003-3 allows for planned gaps in service, it also directs in the event there is a continuing need by the customer for a gap in service, "the One Stop Care Center manager must approve these waivers on a term-by-term basis and the training completion date cannot be longer than five years. R63. Nothing in the record shows that this case management requirement was followed.

25. The record does not establish that a Notice of decision of the December 3, 2004 informal hearing was ever provided to Ms. Farinas.

26. The record contains a January 14, 2004 Notice of Formal Hearing. This Notice does not identify the pertinent sections of the WIA or any other federal regulations, program, law, rule or policies involved in the dispute.

27. The decision from the December 3, 2004 informal hearing focused on whether Ms. Farinas' request to "reengage in training services" [R93] should be granted, which was denied on the grounds that there was a "freeze on new training through WIA." R93. When this decision was reviewed, according to the March 15, 2005 Decision Letter, Ms. Farinas' denial changed from a "freeze on new training through WIA", to a denial because her "family income exceeds established guidelines which would deem you eligible to receive training services." R17.

28. Ms. Farinas lives in Metro Dade County. As of June 15, 2004, the date of Ms. Farinas' "Final Verification" of employment, she was working 40 hours per week at \$13.00 per hour [R116], which equals \$27,040 per year. ($\$13.00 \text{ per hour} \times 40 \text{ hours per week} = \$520 \text{ per week} \times 52 \text{ weeks per year} = \$27,040 \text{ per year}$). The record is silent on what, if any, was the income of Mr. Farinas on this date.

29. According to SFW's WIA Adult Priority of Services and Local Self-Sufficiency Standard, "the Region's self-sufficiency standard for WIA Dislocated Workers includes the highest of either the Adult standard as defined " by the policy "or 80 % of the pre-lay-off wage." This policy further provides that for WIA Adults, "[t]he standard defines the amount of income necessary to meet the basic needs (including paying taxes) in the regular 'marketplace' without public subsidies-such as public housing, food stamps, Medicaid, etc. This policy indicates that a "family with two members, composed of one adult and one teenager, living in Miami-Dade County, would require an annual income of \$27,516 to achieve economic independence. According to this policy, if Ms. Farinas' total household annual income equaled \$27,040, it is not adequate to meet basic needs for a family of six.

30. This policy also defines a "low-income individual," in pertinent part, as an individual that "received an income, that in relation to family size, does not exceed the higher of the poverty level or 70 percent of the lower living standard income level." R49. In 2004, the federal poverty level for a

family of six was \$25,210 per year [R50] and a family of six making \$27,110¹ fell within 70 percent of the lower living standard income level. R50.

31. If the Farinas' total household income was \$27,040 during this time, it fell within the definition of a "low-income" individual as contained in SFW's WIA Adult Priority of Services and Local Self-Sufficiency Standard. Therefore, Ms. Farinas would not have exceeded the higher of the poverty level or 70 percent of the lower living standard income level. As such, it cannot be determined on this record that the March 15, 2005 decision letter is correct.

CONCLUSIONS OF LAW

32. Although workforce services are not an entitlement, a participant adversely affected by a decision or action within the local workforce system, including decisions by One Stop partners and service providers, has the right to file a grievance/complaint with the RWB. 20 CFR § 667.600; *See also* Rule 60BB-1.002(2), Florida Administrative Code.

33. Rule 60BB-1.005, Florida Administrative Code requires that a local workforce board schedule a hearing after the RWB has received the complaint and provides in pertinent part:

(1) After the RWB has received and reviewed the complaint, the local Workforce Board shall schedule a hearing, and notify the grievant or complainant by certified mail, return receipt, at a minimum of fifteen (15) calendar days prior to the hearing. The hearing notice shall advise the following:

- (a) The date, time, and place of the hearing;
- (b) The pertinent sections of the WIA, WT and WtW, or any other federal regulations involved;
- (c) Affected parties may present witnesses or documentary evidence at the hearing;
- (d) Affected parties may be represented at the hearing by an attorney or other representative; and
- (e) The RWB shall issue its decision within sixty (60) calendar days from receipt of the grievance or complaint.

(2) The hearing shall be conducted as prescribed in the procedures established by the appropriate RWB...

¹ On May 16, 2005, this amount increased to \$28,010.

34. In addition to what is required by Rule 60BB-1.005, Florida Administrative Code, SFW's Grievance Policy requires a Notice of Formal hearing to advise a complainant of the "rules or policies involved" and that he or she has the right to obtain, free of charge, a copy of the "file or other related documents that might help" his or her case, to include copies of the "policy which is the subject of the dispute." R115.

35. The January 14, 2005 "Notice of Formal Hearing" did not contain what is required by Rule 60BB-1.005, Florida Administrative Code or by SFW's own Grievance Policy.

36. Finally, the March 15, 2005 decision letter found that Ms. Farinas was disqualified from the program due to income eligibility standards. However, the Region's self-sufficiency standard for WIA Dislocated Adults and/or SFW's WIA Adult Priority of Services and Local Self-Sufficiency Standard shows Ms. Farinas should not be disqualified based upon an annual income of \$27,040.


37. While WIA allows each Region to exercise discretion in determining who receives workforce services and how day-to-day operations are performed, the documentation in this record is insufficient for AWI to determine if SFW's decisions are supportable based upon application of the policies of SFW as contained in the record.

WHEREFORE, the undersigned remands this matter for SFW to:

- a. Review Ms. Farinas' eligibility under applicable policies of the WIA and SFW and reinstate her to the program if her family is within applicable eligibility standards. During its review, SFW should pay particular attention to its policies as they pertain to this case regarding case closure, income eligibility, the equities of the situation resulting from the actions of the case manager in keeping the case open, the failure to abide by the case management requirement for the One Stop Care Center manager to approve waivers on a term by term basis, and the timelines involved in the processing of the case.

- b. If Ms. Farinas is reinstated to the program, the issues involved in this appeal become moot.
- c. If Ms. Farinas is denied reinstatement due to current disqualifying criteria, a written decision fully documenting the reasons for the denial and a notice of a right to a hearing if she is unsatisfied with that decision should be provided to Ms. Farinas. The hearing notice shall advise Ms. Farinas of the following:
- (1) The date, time, and place of the hearing;
 - (2) The pertinent sections of the WIA, WT and WtW, or any other federal regulations involved;
 - (3) That she may present witnesses or documentary evidence at the hearing;
 - (4) That she may be represented at the hearing by an attorney or other representative; and
 - (5) The RWB shall issue its decision within sixty (60) calendar days from receipt of the hearing request.

DONE and ORDERED, this 28th day of July 2005, in Tallahassee, Florida.


Susan Pareigis, Director
Agency for Workforce Innovation

NOTICE OF RIGHTS TO APPEAL

FEDERAL

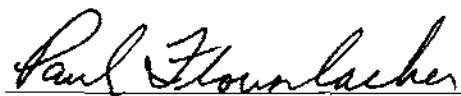
This Agency Decision is rendered pursuant to Workforce Investment Act regulation 20 CFR 667.600(c)(4) and Agency for Workforce Innovation rule Chapter 60BB-1. A party adversely affected by this decision may petition the Secretary of the United States Department of Labor within 60 days of receipt of this 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 # 110 Tallahassee, FL 32399-4128.

STATE

THIS DECISION CONSTITUTES FINAL AGENCY ACTION, pursuant to Section 120.68(2), Florida Statutes. Judicial Review of this proceeding may be 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 appeal within thirty (30) calendar days of the date this order is filed in the Official Records of the Agency for Workforce Innovation, 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 29th day of July 2005, to Ms. Maria Farinas, 19932 Southwest 132 Place, Miami, Florida 33177; Ms. Edith Humes-Newbold, Interim Director, South Florida Workforce, 7300 Corporate Center Drive, Suite 500, Miami, FL 33126 and Peter S. Tell, Esq., 111 N. 1st Street, N. W., Suite 2810, Miami, FL 33128-1930.



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