

DISTRICT OF COLUMBIA
Office of Administrative Hearings
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H.P.,

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY SERVICES
&
REHABILITATION SERVICES
ADMINISTRATION
Respondent

Case No.: 2012-DDS-000XX

FINAL ORDER

I. Introduction

In this case, Petitioner H.P. seeks relief from this administrative court with regard to the Rehabilitation Services (“RSA”) program. The parties have resolved one of two issues in this case, and have agreed to file cross-motions for summary adjudication on the remaining issue.

For the following reasons, I conclude that there are no disputes of material fact, and Respondent District of Columbia Department on Disability Services – Rehabilitation Services Administration is entitled to summary decision in its favor as to the remaining issue.

As a preliminary matter, Ms. H.P.’s hearing request is untimely filed with regard to the March 30, 2010 decision to close out her case, because she received adequate notice on March 30, 2010 and April 1, 2010 that no further services were being offered to her, and that she could file a hearing request within 30 days. 29 DCMR 135.2. In addition, I conclude that the closing

out of Ms. H.P.'s case at that time has no bearing on whether Respondent was obligated to provide RSA services for Ms. H.P.'s Fall 2011 semester program at Montgomery College ("MC"), because Respondent had never obligated itself to pay for post-secondary education services, including MC.

As a substantive matter, Respondent was not obligated to provide RSA services to Ms. H.P. for the Fall 2011 semester, because Respondent had not entered into an individualized plan for employment ("IPE") obligating Respondent to provide such services. *Takahashi v. DHS*, 952 A.2d 869, 874 (2008). When Ms. H.P. applied for RSA services on September 19, 2011, she had already obligated herself for the tuition and costs of her education program at MC.

II. Procedural History

On February 15, 2012, Ms. H.P., through counsel, requested a hearing regarding the RSA program.

A status conference was held on March 15, 2012. Joseph R. Cooney, Esq., appeared on behalf of Ms. H.P. Andrew Reese, Esq., and Tiffany Brown, Esq., appeared on behalf of Respondent. H.S., Ms. H.P.'s father, and Judith Berland, Vocational Rehabilitation Specialist, attended the status conference.

The parties reported that they had resolved one of the issues for hearing: whether Respondent had properly required Ms. H.P. to submit financial information from her parents. Respondent agreed that, since Ms. H.P. received Social Security Disability ("SSD") benefits, Respondent would not require financial information from, or financial participation by, her parents.

The remaining issue, which the parties could not resolve, was whether Respondent was required to provide RSA services to Ms. H.P. for the Fall 2011 semester. The parties agreed that this issue could be resolved through cross-motions for summary adjudication, and agreed to a schedule for motions.

On March 26, 2012, I issued an Order for Motions Schedule, setting forth deadlines for the parties' motions.

Pursuant to the motions schedule, the parties have timely filed cross-motions for summary adjudication, and Ms. H.P. has timely filed her rebuttal argument.¹

In the next section, I will first discuss the standard for summary adjudication. Then I will make findings of undisputed material facts. Finally, I will analyze the parties' arguments as to the preliminary and substantive issues and make conclusions of law.

III. Analysis and Conclusions of Law

A. Standard for Summary Adjudication

OAH Rule 2801.1 provides that, where a procedural issue is not specifically addressed in the OAH Rules of Procedure, an administrative law judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure.

Each party has moved for a decision in their respective favor, under OAH Rule 2819. In support of the respective motions, each party has also relied upon documents that are outside the scope of the pleadings. Therefore, it is more appropriate to consider the motions as akin to a

motion for summary judgment or summary adjudication, than a motion for dismissal. *Compare* D.C. Superior Court Rules 12-I(k) and 56 [summary judgment] *with* D.C. Superior Court Rule 12(b)(6) [dismissal for failure to state a claim].

Under Rule 56, the burden is on the moving party to show: (1) that there are no issues of material fact; and (2) that the moving party is entitled to judgment as a matter of law. *See, e.g., Kissi v. Hardesty*, 3 A.3d 1125, 1128 (D.C. 2010).

In ruling on a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party, resolving any ambiguities against the moving party. *E.g., Young v. Delany*, 647 A.2d 784, 788 (D.C. 1994).

In this case, I must grant summary adjudication in favor of Respondent. Consequently, I will make findings of fact after construing all ambiguities in favor of Ms. H.P., against whom summary adjudication is granted.

B. Undisputed Facts

Ms. H.P. is a District resident and has a disability. She received special education services and graduated from Ivy Mount Secondary School in January 2008. Petitioner’s Exhibit (“PX”) 100.

Ms. H.P. was found eligible for RSA services and her first IPE was developed and signed on December 29, 2008. The IPE provided supported employment services through St. John’s Community Services. (“SJCS”) This IPE did not provide for services at Montgomery College

¹ On May 11, 2012, Respondent filed a Motion for Enlargement of Time for one day to file its responsive motion, and represented that Ms. H.P.’s attorney, Mr. Cooney, had consented to the request. Respondent’s request to extend the deadline for its responsive motion is granted.

(“MC”). The employment goal was not specified in the IPE, and the estimated date of achieving her employment goal was November 18, 2009. The RSA services began on January 12, 2009.

During 2009, pursuant to her IPE and, with the assistance of her job coach from SJCS, Ms. H.P. volunteered at York Flowers of DC, and searched for employment in the fields of tour guide, flower arranger, usher ticket taker, and janitor.

On December 1, 2009, Ms. H.P. was hired as a part-time paid intern at the Smithsonian Institution. The internship was scheduled to last until April 15, 2010. PX 103.

The job coach also assisted Ms. H.P. in registering for classes at MC. Ms. H.P. began taking courses at MC beginning February 5, 2010. RX 105.

Ms. H.P. did not seek RSA services for the MC courses, and the IPE was not amended to include payment for educational expenses at MC.

Ms. H.P.’s internship at the Smithsonian Institution actually ended on March 19, 2010.

Respondent suspended RSA services to Ms. H.P., effective April 1, 2010. PX 106 and 107. On March 30, 2010, Ms. H.P. signed an amendment to the IPE that closed out her case because she was “rehabilitated.” Respondent’s Exhibit (“RX”) 3. The document included advice about Ms. H.P.’s right to request an informal resolution, mediation or a hearing if she was dissatisfied with any decision concerning her RSA services. It also stated that the deadline for requesting a hearing was “thirty (30) days of the occurrence of the action upon which the complaint is made.” RX 3.

Ms. H.P. has acknowledged that she signed RX 3, but she claims that she did not understand that her case had been closed out. PX 111 (Affidavit of H.S.).

On April 1, 2010, Catherine Smith, Vocational Rehabilitation Specialist, sent to Ms. H.P. a letter, PX 108, which stated in pertinent part:

Congratulations on your continued employment. The Rehabilitation Services Administration (RSA) is always happy when a client achieves the employment outcome she has chosen. You have worked now for more than 90 days. Your adjustment to employment has been good and the services planned have been completed. Therefore, your case with RSA will be placed in the inactive files. This transfer was discussed with you and you agreed that it was reasonable. If you need additional services in the future, please do not hesitate to call [telephone number provided] and request assignment to a counselor.

PX 108 [telephone number redacted].

From April 1, 2010 to September 18, 2011, Ms. H.P. did not request any RSA services from Respondent.

On September 19, 2011, Ms. H.P. requested RSA services to attend MC for the Fall 2011 semester. Ms. H.P. was already enrolled at MC, and she had paid the educational costs through her parents.

Respondent required Ms. H.P. to reapply for RSA services and to go through the eligibility process. Ms. H.P. was found eligible for RSA services on October 18, 2011. RX 5.

On January 20, 2012, Respondent offered an IPE to Ms. H.P. authorizing RSA services for the Spring 2012 semester at MC only, and not for the Fall 2011 semester. Respondent has subsequently agreed not to require Ms. H.P. to submit financial information from her parents and not to require financial contributions from Ms. H.P. toward her educational costs.

On February 15, 2012, Ms. H.P. filed her hearing request. In part, Ms. H.P. seeks relief with regard to the closure of her case in March 2010.

C. Analysis

Preliminarily, I must address an issue raised by Respondent that Ms. H.P.'s hearing request is untimely filed because she did not file it within 30 days after closure of the case. I agree with Respondent's position, and I will dismiss Ms. H.P.'s claim that Respondent has improperly closed out her case. In addition, I conclude that Ms. H.P.'s prior IPE never obligated Respondent to provide services at MC, and that Ms. H.P. did not request RSA services for her educational program at MC until September 19, 2011. Therefore, the issue whether the closure of her case was proper has no bearing on Respondent's obligation to fund the program at MC.

Then, I will address the central issue: whether Respondent is required to fund the MC program before it has entered into an IPE obligating it to do so. I conclude that Respondent has no obligation to fund the Fall 2011 semester at MC because Respondent had not entered into an IPE for that semester.

1. The Hearing Request is Untimely Filed as to the March 30, 2010 Closure

Under 29 DCMR 135.2, a client of RSA who is dissatisfied with any determination concerning the furnishing or denial of RSA services must file a hearing request within 15 days of a written notice of the action or within 30 days of the occurrence of the events that form the basis for the complaint.

In *Zollicoffer v. D.C. Public Schools*, 735 A.2d 944, 946-47 (D.C. 1999), the District of Columbia Court of Appeals held that: (1) time limits for filing appeals of agency decisions are jurisdictional, and failure of a party to file a timely hearing request divests the agency of jurisdiction to hear the matter; and (2) an administrative agency is charged with giving notice that is “reasonably calculated to apprise [a party] of the decision ... and an opportunity to contest that decision.” *Id.* at 947.

Thus, in order to commence the jurisdictional period for filing a hearing request, as a matter of due process the agency is required to give proper notice of the action and of the client’s hearing rights.

In this case, Respondent has shown that, on March 30, 2010, Ms. H.P. signed and received a copy of the amendment to the IPE closing out her case. RX 3. The document on its face informed Ms. H.P. that her case was being terminated because she was “rehabilitated,” and the notice included language advising Ms. H.P. accurately of her hearing rights.

In addition, Respondent’s vocational counselor sent a letter to Ms. H.P. on April 1, 2010, PX 108, advising her that the case would be placed in the inactive files. This letter also accurately advised Ms. H.P. of her hearing rights.

Thus, with these two notices, Respondent has fully complied with its requirements under *Zollicoffer*. The time period for Ms. H.P. to file a hearing request commenced at least on April 1, 2010, when the letter was sent to Ms. H.P. At best, Ms. H.P. had a deadline of May 1, 2010 to file her hearing request.

Her February 15, 2012 hearing request was untimely filed as to this issue.

Ms. H.P.'s hearing request was timely filed as to the other action at issue: Respondent's January 20, 2012 decision to deny RSA funding for the Fall 2011 semester.

Ms. H.P. argues that she never understood that her case had been closed out, but thought that she was being "transferred." However, Ms. H.P. has agreed that she signed the amendment to the IPE, and it clearly stated that no further services were to be provided.

Ms. H.P. also argues that the representations in the April 1, 2010 letter, PX 108, that she had been employed for 90 days and that she had achieved her employment goal, are false, and that Respondent also erred in failing to state an employment goal in the prior IPE. These arguments go to the merits of whether the closure was proper. Since the hearing request was untimely filed, I cannot decide those issues.

Finally, in addition to the fact that the hearing request was untimely filed, I further conclude that Ms. H.P.'s claim regarding closure of the case is irrelevant to the main issue in this case: whether Respondent is required to fund Ms. H.P.'s educational program at MC for the Fall 2011 semester. The prior IPE provided RSA services primarily through SJCS, and did not provide funding for a post-secondary education program. Respondent never obligated itself to fund Ms. H.P.'s program at MC during the period prior to closure, or indeed at any time prior to January 2012.

2. Respondent Did Not Obligate Itself to Pay for Fall 2011 Semester

The substantive issue is whether Respondent was required to fund the Fall 2011 semester. Ms. H.P. contends that she was still a client of the RSA program when she attended MC in the Fall of 2011. However, her argument depends on the supposition that her case was never

properly closed out. As indicated above, Ms. H.P.'s hearing request was untimely filed on this issue.

Even if this argument were valid, Ms. H.P. still could not prevail because her prior IPE never contemplated her attending MC, and Respondent never agreed to pay for her educational program at MC.

In *Takahashi v. DHS*, 952 A.2d 869, 874 (2008), the District of Columbia Court of Appeals held that the RSA program is not liable for educational costs incurred prior to the date that an IPE has been developed, obligating RSA to pay for particular educational services. *See* 34 C.F.R. §§ 361.42 and 361.45 (RSA may only expend funds for necessary assessments and evaluations, or for services provided pursuant to an *approved* IPE).

The holding in *Takahashi* is controlling here. As in *Takahashi*, Ms. H.P. applied for RSA services after the Fall 2011 semester had begun and after she had obligated herself to pay for tuition and other costs at MC. Respondent did not find her eligible for RSA services until October 18, 2011, and Respondent did not offer an IPE until January 20, 2012. Respondent never agreed to be obligated for Ms. H.P.'s tuition and costs for the Fall 2011 semester.

For these reasons, I conclude that there are no disputes as to material facts, and Respondent is entitled to a decision in its favor as a matter of law.

V. Order

Therefore, it is hereby, this 18th day of May, 2012:

ORDERED, that Respondent's motion for summary adjudication is **GRANTED**; and it is further

ORDERED, that Ms. H.P.'s motion for summary adjudication is **DENIED**; and it is further

ORDERED, that Ms. H.P.'s request for relief due to the alleged improper closure of her case on March 30, 2010 and April 1, 2010, is **DISMISSED FOR LACK OF JURISDICTION**; and it is further

ORDERED, that Ms. H.P.'s request for reimbursement by Respondent for her educational costs at Montgomery College during the Fall 2011 semester is **DENIED AND DISMISSED WITH PREJUDICE**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

/s/

Paul B. Handy
Administrative Law Judge