

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],

Claimant

Reg No: 2009-27390

Issue No: 1021

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 29, 2009

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a hearing was conducted on July 29, 2009. The Claimant appeared and testified. Roxie Shintoski, FIS appeared on behalf of the Department.

ISSUE

Whether the Department properly issued a negative action on Claimant's FIP case for a failure comply with Work First?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was an active FIP recipient who was referred to JET.
2. Claimant was attending Work First in March of 2009.
3. There was no JET coordinator present at the hearing to testify. However, the case notes indicate that Claimant "lost homework credit for 3/9, 3/10, 3/11, 3/13, 3/16

3/17 and 3/18 thus exceeding her loss of homework credit for the month.”
(Exhibit 1, p. 6).

4. Claimant clearly does not speak or understand English well. While this hearing was conducted without the use of an interpreter, everything had to be repeated or explained to Claimant. An interpreter would have been helpful.
5. Claimant testified that she did not understand the homework and was unable to complete it due to the language barrier. Furthermore, some of the homework required the use of a computer which Claimant also does not understand.
6. The Department indicated that Claimant has attended several years of English as a Second Language classes without significant progress.
7. The Department scheduled a triage on 4/9/09 and no good cause was found.
(Exhibit 1, p. 1).
8. Claimant’s FIP case was closed on 4/14/09. (Exhibit 2).
9. On April 9, 2009, the Department received the Claimant’s written hearing request.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (formerly known as the Family Independence Agency) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal and State laws require each work eligible individual in a FIP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless

temporarily deferred or engaged in activities that meet participation requirements. PEM 230A. All work eligible individuals who fail, without good cause, to participate in employment or self-sufficiency-related activities will be penalized. PEM 233A. Failure to appear at a JET program results in noncompliance. Id. A client can request a deferral from Work First. When a request for deferral is not granted, the Department is required to document the basis of the decision for denial and advise the client of their right to discuss the deferral decision with a supervisor and file a grievance if the client disagrees with the activities assigned at JET. PEM 230A, p. 19.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. PEM 233A at 4. Good Cause includes when the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. It also includes when the DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability. PEM 233A at 4. The penalty for noncompliance without good cause is FIP closure. Id. at 6. If good cause is established the negative action is to be deleted. Id. at 12.

In this case, the Administrative Law Judge finds that the Department's evidence is insufficient to meet the burden of showing that the Claimant was noncompliant. It is obvious that Claimant has a language barrier. During the hearing, many things had to be repeated and explained to Claimant. Also, the Department testified that Claimant did not make progress at ESL classes despite attending for several years. Since no one from JET appeared to testify, it is unknown if this is because Claimant did not put forth effort or was simply unable to learn.

Regardless, the language barrier is a factor beyond the control of Claimant that prevented from completing her homework. The Administrative Law Judge finds that this amounts to a physical disability for which Claimant needs accommodation.

Accordingly, the Department has failed to show that Claimant was noncompliant with Work First requirements. Based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department's determination is not upheld.

Accordingly, it is ORDERED:

1. The Department's negative action and case closure of 4/14/09 for noncompliance with Work First shall be deleted.
2. The Department shall reopen Claimant's case from the date of closure, 4/14/09, and supplement the Claimant with any lost benefits she was otherwise entitled to receive.

/s/ _____
Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/29/09

Date Mailed: 09/01/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JV/dj

cc:

