

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: 2009-34006
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 30, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on September 30, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for non-compliance with work-related activities?

FINDINGS OF FACT

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

- (1) Claimant was receiving FIP benefits in Oakland County.
- (2) Claimant had changed her address several times, due to an eviction; claimant may or may not have informed the Department as to her current address.
- (3) On February 13, 2009, claimant was sent a JET Appointment Notice with a meeting date of February 18, 2009 or February 19, 2009.

- (4) According to the MIS notes, claimant did not attend this meeting.
- (5) Even though claimant's FIP had been active during claimant's last JET session, claimant's benefits were somehow stopped, and claimant had re-filed her application.
- (6) No negative action was entered, and claimant's FIP application was approved.
- (7) Claimant received FIP benefits through the month of April.
- (8) On April 10, 2009, almost 2 months after the failure to participate, DHS sent claimant a negative action notice alerting claimant that her benefits would be cut-off on April 22, 2009.
- (9) Claimant was never sent a DHS-2444, Notice of Noncompliance.
- (10) No triage was held.
- (11) No good cause determination was made.
- (12) Claimant was not offered a DHS-754, First Noncompliance Letter.
- (13) Claimant's FIP grant was cancelled on April 22, 2009.
- (14) It is unknown if this is claimant's first incident of non-compliance.
- (15) The Department claimed that her FIP grant had been opened by mistake, and that because claimant had not attended JET orientation, no triage was required.
- (16) Claimant requested a hearing on May 27, 2009, alleging that her FIP grant was improperly placed into closure.

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 (DHS or department) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full-time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called “noncompliance”. BEM 233A defines noncompliance as failing or refusing to, without good cause:

“...Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider...” BEM 233A pg. 1.

However, a failure to participate can be overcome if the client has “good cause”. Good cause is a valid reason for failing to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participatory person. BEM 233A. A claim of good cause must be verified and documented. The penalty for noncompliance is FIP closure. The first occurrence of noncompliance on the FIP case can be excused; subsequent incidents result in automatic sanction, absent good cause. BEM 233A.

Furthermore, JET participants cannot be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause.

BEM 233A. Triage meetings are scheduled by first informing the client that they have failed to participate, through the use of a DHS-2444, Notice of Noncompliance. These forms notify the client that the Department believes they have been noncompliant, and schedules a triage meeting. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. Should a client call to reschedule, a phone triage should be held at that time if possible. BEM 233A.

If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

The evidence of record shows that the Department's procedures were almost, but not quite, entirely unlike the procedures required by the Bridges Eligibility Manual.

BEM 233A requires that a DHS-2444, Notice of Noncompliance, be sent within 3 days of an alleged noncompliance; the Department did not produce this form, or provide any proof that this had ever been done. The Department argued that this was not done because claimant's FIP application was supposedly still pending; however, it is undisputed that claimant was receiving benefits at the time, meaning that her application had been processed and approved. Therefore, the termination procedures in BEM 233A should attach, and any regulations pertaining to pending applications become irrelevant. BEM 233A requires that a DHS-2444 be sent before any termination is processed. This was not done, in violation of BEM 233A.

This form is supposed to schedule a triage with the claimant; the Department testified that no triage was ever held. BEM 233A specifically states that a client cannot be removed from the JET program without first scheduling a triage; this was never done, in violation of BEM 233A.

FIP benefits cannot be terminated without first scheduling a triage. Thus, the termination of FIP benefits was in error.

The Department argued that a triage was unnecessary, because claimant should never have been approved for FIP benefits in the first place. Upon examination, the Administrative Law Judge finds this argument wholly without merit. Claimant had been scheduled for an “up-front” triage in January, 2009, ostensibly to go over any barriers claimant might have had that were preventing her from receiving gainful employment. While the undersigned finds these meetings to be laudable, the fact that this was scheduled in the first place because claimant had been through the JET program 9 times indicates that claimant was receiving FIP benefits at the time. No evidence was presented by the Department that claimant’s FIP benefits were terminated subsequent to this date. The undersigned thinks it likely that claimant’s benefits continued, and if this is the case, regardless of the fact claimant failed to attend orientation, a triage was necessary before a benefit termination could be initiated.

However, even if claimant did have a new application in, because there is an actual termination of FIP benefits in the present case, we must conclude that the Department did approve the benefits. No negative case action was even initiated until April, 2009, which would have been far outside the Standards of Promptness to process an application. The Department can only (arguably) deny a pending FIP application without making a good cause determination if an application is still pending. When the application is processed, the Department must make a good cause determination before terminating FIP benefits for noncompliance. This requires a triage.

The Department testified that claimant’s application had been mistakenly approved, and therefore, no triage was necessary. The Administrative Law Judge would only point out that a

negative case action was not initiated until the Standards of Promptness had passed for approving of denying an FIP application; this means that the Department should have approved or denied the application by this point, which is supported by the fact that the claimant was actually receiving benefits. As claimant was receiving benefits, the undersigned finds it far more likely that claimant's application had been approved, given the Standards of Promptness, and thus, as the application was no longer pending, any termination for noncompliance would require a good cause determination and a triage. The policy does not care if an application was mistakenly approved. The policy only states that any currently open FIP benefit case, as is the case here, requires a good cause determination before a termination can be initiated. This was not done, and thus the Department was incorrect to terminate benefits.

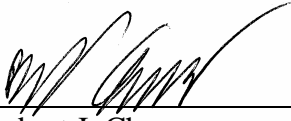
Finally, the undersigned does not believe that the failure to hold a triage was harmless error; the testimony submitted by the claimant at the hearing indicated that the claimant was probably homeless during the time period in question. BEM 233A does list homelessness as reason to award good cause; the undersigned feels that if the claimant had been given the chance to present her story at the triage, a finding of good cause would have been appropriate and no loss of benefits would have occurred.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's cut off of the claimant's FIP grant in violation of the Department's own policies and procedures was improper.

Accordingly, the Department's decision in the above stated matter is, hereby,
REVERSED.

The Department is ORDERED to restore claimant's FIP grant retroactive to the date of negative action. The Department is FURTHER ORDERED to schedule claimant for a triage, and make a good cause determination with regard to claimant's failure to attend JET orientation during the dates in question, consistent with the policies found in BEM 233A.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/29/09

Date Mailed: 10/30/09

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.

RJC/dj

cc:

