

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No.: 2009-37025
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
October 26, 2009
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant's request for a hearing. After due notice a telephone hearing was held on October 26, 2009. The Claimant personally appeared and testified.

ISSUE

Did the Department properly close the Claimant's Family Independence Program (FIP)?

FINDINGS OF FACT

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

1. The claimant was a FIP recipient and required to be involved in employment related activities.
2. On August 31, 2009, and on September 1, 2009, the Department sent the Claimant a notice noncompliance with a triage scheduled for September 9, 2009, and September 24, 2009, respectively. (Department exhibit2), (Claimant exhibit 1).

3. On September 9, 2009, the department found no good cause for the claimants work related noncompliance. (Department exhibit 1).
4. On October 1, 2009, the department closed the Claimant's FIP due to noncompliance with work related activities.
5. On September 14, 2009, claimant filed a request for a hearing.

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).

At the hearing the department testified that it closed the claimant's FIP on October 1, 2009, because the claimant stated that she was in school and would not stop to attend JET.

The claimant testified that she had arraigned her school schedule to allow her to attend JET.

Evidence presented at the hearing shows that the department sent the claimant two notices of noncompliance with two different dates for triage. The evidence also shows that the department closed the claimant's FIP after receiving the request for a hearing.

While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, do one of the following that applies to the case.

Delete the pending negative action.

Reinstate program benefits to the former level for a hearing request filed because of an immediate negative action. (PEM 600, p.17).

The department was not in compliance with the above policy and should not have closed the claimant's FIP.

The evidence shows that the department began to close the claimant's FIP when the claimant did not attend the "first" triage and did not delete the pending negative action as required by the above policy.

In addition:

First Case Noncompliance Without Loss of Benefits

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is No Good Cause, within the negative action period, do the following:

Review and modify the FSSP as necessary during the triage.

Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.

Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period.

Advise the client that the instance of noncompliance will remain on record even if the client complies. The noncompliance will be excused, but not erased and could result in longer sanctions if the client is noncompliant in the future.

If the client **accepts** the offer to comply and agrees with the department's decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754.

When a phone triage is conducted for a first noncompliance and the client agrees to comply, complete the DHS-754 as you would complete for an in-person triage meeting. When completing

the form note in the client signature box Client Agreed by Phone. Immediately send a copy of the DHS-754 to the client and phone the JET case manager if the compliance activity is to attend JET and the JET case manager was not included in the phone triage.

Delete the negative action entered when the DHS-2444 was issued and enter a new negative action on CIMS using negative action code **Y405** if the compliance activity cannot be completed before FIP case closure takes effect.

Enter the outcome of the Excuse on the FSSP as defined below.

Verification of completion of a compliance activity may include a signed copy of the DHS-754 or any collateral contact with JET or other service provider.

When the client verifies compliance within the negative action period and is meeting the assigned activity that corrects the noncompliance, delete the second negative action. If the case closed in error, reinstate the case with no loss of benefits.

If the client **does not accept** the offer to comply, document the decision on the FSSP under the Participation and Compliance tab and allow the case to close.

If the client does not agree with the department's decision of non-compliance without good cause, use the second check box on the DHS-754 that advises the client not to sign the form. Assist the client with filing a hearing request and advise them that if they lose the hearing, they will receive a new notice of noncompliance and a new meeting date and they have the right to agree to the activities outlined on the DHS-754 and avoid the financial penalty at that time unless another group member uses the family's first excuse before the hearing issue is settled.

Send a new DHS-2444 with an appointment date and time and put the case in negative action using negative action code **Y405** or **Y407**. The client must attend the triage and comply with assigned activities within the negative action period.

If the client fails to meet or contact the FIS within the negative action period or fails to provide verification of compliance without good cause, the three-month sanction applies.

This policy only applies for the first case of noncompliance on or after April 1, 2007. It is only offered one time for each case for the

first noncompliant member on that case when there is no good cause. (PEM 233A, pp. 10-11)

In the instant case the department never offered the above “First Noncompliance Letter,” to the claimant.

This ALJ finds the claimant’s testimony credible and finds that the department should have sent the claimant back to JET after having the claimant sign the above “First Noncompliance Letter,” and after having deleted the “pending negative action.”

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, **REVERSES AND ORDERS** the Department to retroactively reopen the Claimant’s FIP and replace any lost benefits, if the claimant agrees and signs the “First Noncompliance Letter.”



Michael J. Bennane
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/10/09

Date Mailed: 11/10/09

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 receipt 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.

MJB/jlg

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