

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-51725
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 27, 2010
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 a hearing. After due notice, a telephone hearing was held on September 27, 2010. The claimant appeared and testified. [REDACTED], appeared as a witness for the Claimant. [REDACTED] FIS and [REDACTED], Jet caseworker appeared on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for noncompliance 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. The claimant was a recipient in Macomb County and was assigned to WorkFirst.
2. The claimant was a participant in a JET program and was assigned to the Salvation Army, where she was employed pursuant to a community service program.
3. As part of her job, she was required to tag and sort various pieces of apparel and other goods.
4. The claimant was relieved from her responsibilities of the program, when it was discovered that she had items which she had not purchased in a bag

underneath her personal items when she was leaving the premises.
Exhibit 1

5. The claimant testified at the hearing that she was going to pay for the items and was going to have them priced checked and that there was a misunderstanding.
6. The claimant had previously purchased items from her worksite earlier that day prior to beginning work. The claimant put the items in the office as she was required to do.
7. When leaving the office for the day, the claimant held several items in her hand which she advised her supervisor she intended to purchase. In addition there were several other items in a bag which she was unsure of whether she was going to purchase and did not bring to her supervisor's attention that the items were in the bag.
8. The claimant testified that she had a designer purse, into which she put three designer baseball hats, which she intended to purchase and placed them in the bag.
9. The triage was held on August 12, 2010, at which the Claimant was found to be in noncompliance and without a good cause for losing her job.
10. The basis for the Department's good cause determination was based in part on documents submitted to the WorkFirst Program by the Claimant's Salvation Army supervisor. Exhibit 1 and Exhibit 2.
11. This was the claimant's second noncompliance and she had been found to be in noncompliance in June 2009, when she failed to attend the WorkFirst job program as required and turn in her attendance sheets. The Claimant was deemed noncompliant and was then deferred due to her pregnancy.
12. The claimant's case closed for three months pursuant to the Notice of Case Action dated August 17, 2010. At that time, both the claimant's FIP and CDC cases were closed due to noncompliance with WorkFirst requirements.
13. The claimant's case was closed from September 1, 2010 through November 30, 2010.

14. The Claimant requested a hearing on August 29, 2010 protesting the closure of her FIP case and denial of her CDC. The claimant's request for hearing was received by the Department August 30, 2010.

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 R400.3101-3131. 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 p. 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 claimant. BEM 233A. page 3. The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused. 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. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date. 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.

GOOD CAUSE FOR NONCOMPLIANCE

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. BEM 233A, page 3.

After a careful examination of the documentary evidence provided by the Department, the Administrative Law Judge has determined that the Department has met its burden of proof and is correct in its finding that the claimant failed to participate with JET activities. The Department presented documentary evidence which demonstrated that the claimant was terminated from her community service assignment when she was let go by her supervisor for being caught removing items she had not purchased. Exhibit 1 and 2. These circumstances which caused the Claimant to be dismissed from her assignment were within the direct control of the Claimant. The Claimant chose to put items in her bag rather than carrying them in plain view. This result is supported by the fact that the Claimant did not volunteer what was in the bag as would be the case of someone intending to purchase items and also had several items stuffed in the purse she was purchasing. The Claimant knew the procedures for purchasing items and did not act appropriately to avoid the appearance that she was improperly removing items without paying for them. Once the bag was searched the items were found before any mention of them being purchased.

The WorkFirst program personnel and the Department must determine good cause 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. BEM233A page 7

The Claimant did acknowledge that she was aware of how to purchase items and did not have a credible explanation why she placed the items in the bag which were not marked and in the manner in which she did so. Further, the decision and finding of no good cause was based in part upon an e-mail from the supervisor who had terminated the claimant from the community service program. Based on the record as all whole it appears that the claimant did not have or demonstrate good cause for being terminated from her community service assignment at the Salvation Army and was properly sanctioned for noncompliance without good cause.

In the current case, the evidence provided to prove the underlying case—that claimant had failed to comply with WorkFirst requirements based upon acts of misconduct at a work first community service location supports a finding of no good cause and closure of

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the claimant's FIP and CDC cases. Therefore, the undersigned must rule that the finding of no good cause and the imposition of a 3 month sanction closing the Claimant's FIP and CDC cases as required by BEM 233A is correct and are AFFIRMED

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department's finding of noncompliance and no good cause for the claimant's conduct at the triage was correct as was the sanctioning and closure of her FIP and CDC cases.

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



Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/06/2010

Date Mailed: 10/06/2010

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.

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