

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: 201022194
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2010
Wayne County DHS 43

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 claimant's request for a hearing. After due notice, a hearing was held on May 5, 2010. The Claimant appeared and testified in her own behalf. The Department was also represented and appeared through Stephanie Grace, FIS.

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?

Did the Claimant demonstrate good cause for failure to attend the JET program?

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 a FIP recipient in Wayne County.

- (2) The Claimant attended JET beginning July 13, 2009 until she could no longer attend due to lack of childcare in November 2009.
- (3) The Claimant applied for CDC childcare benefits on July 14, 2009 through the JET program and had her CDC provider seek approval as a certified provider at the same time. Exhibit 1
- (4) The Claimant was assured by JET that her application for Child Day Care would be processed by the Department and that JET would forward the Claimant's application.
- (5) The Claimant was sent a Notice of Non Compliance on February 1, 2010 for failing to report to work first, and a triage meeting was scheduled for February 5, 2010. Exhibit 2
- (6) The Claimant did not attend the triage.
- (7) The Claimant did not receive the Notice of Non Compliance until after the triage date, as her utilities had been shut off and she was not living at her residence. Once she received the Notice she went to DHS and explained the situation to her worker on January 12, 2009.
- (8) This was the Claimant first case of alleged non compliance with the JET program.
- (9) The Department did not establish at the hearing the basis for the no good cause determination it made with regards to the Claimant's non compliance.
- (10) No one from the JET program attended the hearing and no notes from the JET program were offered as evidence.
- (11) A Notice of Case Action was not issued as the Claimant requested a hearing prior to the Notice of Case Action being issued. Exhibit 3 (Hearing Summary)

- (12) On February 12, 2010, the Claimant requested a hearing disagreeing with the Department's action and termination of her FIP benefits and contesting the no good cause finding.

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 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. 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. If a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. 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 must be considered, even if the client does not attend.** 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.

In the current case, the Department’s procedures towards overcoming claimant’s non-participation were inadequate. Based on the credible testimony of the Claimant, legitimate questions were raised regarding her alleged non compliance. The Claimant regularly attended JET for a period of several months without incident while she awaited word with regard to her Child Day Care (CDC) application. The Claimant was provided an application by the JET program at the orientation, and the claimant assumed the application was forwarded to the Department by JET, as she had been assured by JET that was the case. The Claimant was advised that it would take at least 45 days for her childcare benefits. The Claimant also had her

provider, a family member, complete the provider information form for approval by the Department.

In November, after not receiving a call back from her DHS worker or her worker's supervisor regarding the status of the CDC application, the Claimant could no longer attend JET because she had no day care for her child. The Claimant told the JET worker assigned to her that she had no child care and had been waiting to hear from the Department and had not. The Claimant was a credible witness and has established that good cause did exist for her attendance non compliance.

The fact is that BEM 233A requires the Department to hold a triage and make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that an actual good cause determination was ever made, other than that the Claimant did not show up for the triage. Further no one from the JET program rebutted the Claimant's version of what occurred that caused her to be unable to attend JET. The fact that the Claimant had given JET notice of the reason for her non compliance, no child care, yet the Department still found no good cause cannot be sustained on the record as presented by the Department.

The Hearing Summary prepared by the Department states: "Customer did not attend triage and should be automatically sanctioned for 90 days." The Department did not produce any documents or testimony that it relied upon, or any information received from JET thus it can only be concluded that the case was put into negative action because claimant did not attend the triage.

The Department did not present any other evidence such as JET daily logs and JET worker notes for the period in question. Based on these facts, the undersigned must hold that the Department did not make an individual assessment. This is plain error.

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 at 4. Good cause includes lack of child care. 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, it is found that the Claimant did have good cause for her failure to attend JET. The claimant applied for child day care the very first day of the JET program and filled out an application which was to be forwarded to DHS by the JET program. The Claimant reasonably relied upon the representations of JET that it would give all the CDC applications to the Department. Notwithstanding the fact that the Department did not have an application for CDC benefits in its files, the claimant's credible testimony established that she took all steps necessary to apply for CDC benefits. Under these facts and circumstances, the Department must make right the situation caused by its JET representative and refer the claimant back to JET and receive and process a new application for CDC benefits retroactive to July 13, 2009. If the claimant is deemed eligible for CDC, the Department shall grant CDC benefits retroactive to July 13, 2009.

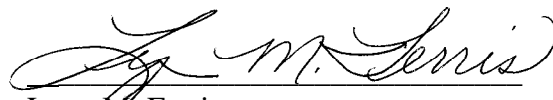
This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures, and that the claimant's case should not be put into closure as good cause exists for the Claimant failure to attend the JET program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was in error when they failed to make a good cause determination with regard to the Claimant's alleged non compliance. The Claimant has also established good cause for her non compliance.

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

- (1) The Department is ORDERED to reopen claimant's FIP case, if it was closed, retroactive to the date of case closure. The Department shall also supplement the Claimant for FIP benefits she was otherwise entitled to receive during the period her case was improperly closed.
- (2) The Department's negative action and sanction for Claimant's non compliance with JET shall be deleted.
- (3) The Department shall receive and commence processing the Claimant's new CDC application and shall grant the Claimant Child Day Care benefits retroactive to July 14, 2009 (the day the Claimant first attended JET assuming the Claimant is otherwise eligible). The Claimant shall not receive Child Day Care for any period she did not attend JET after the triage date February 5, 2010.
- (4) The Department shall also review and process the claimant's CDC provider application as to whether the provider is certified and approved by the Department.
- (5) The Department shall refer the Claimant back to the JET program.



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

Date Signed: 06/07/10

Date Mailed: 06/08/10

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.

LMF/dj

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