

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: 201025786
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 17, 2010
Wayne County DHS

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 hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on May 17, 2010. The Claimant appeared and testified. William Monroe, FIM and Carol Turner, FIS appeared on behalf of the Department.

ISSUE

Whether the Department properly issued a negative action closing the Claimant's FIP case and imposing a 3 month sanction for noncompliance with the Work First Program requirements?

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 had been referred to Work First.

2. Claimant allegedly missed mandatory Work First (JET) participation hours and was cited for poor attendance. Exhibit 1, DHS Hearing Summary
3. A triage was scheduled for November 5, 2009 pursuant to a notice of non compliance dated October 28, 2010 and was attended by the Claimant. Exhibit 2. At the triage, the claimant advised the Department that her minor son had been hit by a car on July 6, 2009 and had been hospitalized. At the time of the triage, the Claimant's son was in physical therapy 4 times a week for the next 6 months.
4. The Claimant was given an opportunity to submit verification of her son's condition and physical therapy needs.
5. The Department did not offer the Claimant a DHS 754 at the triage nor did they discuss it with the Claimant.
6. The Claimant did not submit the requested verification information. No determination of good cause or no good cause was made by the Department with respect to the Claimant's triage conducted on November 5, 2009.
7. On January 4, 2010, pursuant to a redetermination, the Claimant was asked to provide verification of medical needs. A verification checklist was given to the Claimant on January 4, 2010. The Claimant did not provide the requested information by the due date of January 14, 2010. Exhibit 3
8. The Claimant was scheduled, again, for a second triage on February 4, 2010 pursuant to a notice of noncompliance dated January 25, 2010. Exhibit 4
9. The Claimant did not attend the triage and her FIP case was closed on March 1, 2010. Claimant was sanctioned and her FIP benefits were terminated for 3 months. Exhibit 5

10. This was the Claimant's first sanction for noncompliance with work first requirements.
11. On February 17, 2010, the Claimant provided the Department with the crash report detailing her son's accident and an updated report from the company providing physical therapy. The reported stated that the Claimant's son was receiving physical therapy 3 times a week for 4 weeks. Exhibit 6
12. At the hearing, the Claimant provided an updated form from [REDACTED] [REDACTED] dated March 4, 2010. The document established that the claimant's son was receiving physical therapy 3 to 4 times per week until further notice. The form also certified that, at that time, the claimant's son had need for assistance with grooming, taking meds, dressing, meal preparation, laundry, and that the Claimant had to accompany the patient (son) as he is a minor. Exhibit 7
13. On March 3, 2010, the Claimant requested a hearing regarding her FIP benefits being terminated.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

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. BEM 230A. All work eligible individuals who fail, without good cause, to participate in employment or self-sufficiency-related activities will be penalized. BEM 233A. Failure to appear at a JET program results in noncompliance. Id.

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 being physically or mentally unfit for the job or activity as shown by medical evidence or other reliable information. It also includes having an immediate family member with an illness or injury that requires in-home care by the client. Id. 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 Claimant attended the first triage and was told to provide verification of her son's medical condition. No determination or finding of good cause or no good cause was made with respect to the triage as required by BEM 233A, page 7. The Claimant was not offered a DHS Form 754 at that triage, as required, and the triage was never concluded. The Department should not have conducted another triage, as it already had a triage pending; and the failure of the Department to offer the Claimant a DHS Form 754, is fatal.

BAM 233A provides as follows:

Determine good cause during triage and prior to the negative action effective date. Good cause must be verified and can be based on information already on file with the DHS or the JET program. Page 8

Policy BEM 233A page 8 goes on to provide:

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”, do the following:

First Case of Non Compliance Without Loss of Benefits

- 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.

Likewise, a procedure is also offered if the client disagrees with the triage decision finding no good cause:

If the client disagrees with the department’s decision of noncompliance 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 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. BEM 233A, page 9

There appears to be no basis for the Department to have held another triage and doing so, without first making a determination of good cause relative to the first triage, which was attended by the Claimant, deprived the Claimant of the opportunity to disagree with the findings of no

good cause and, therefore, the opportunity to avoid the 3 month sanction that was ultimately applied with the closure of her FIP case. BEM 233, page 8. Had the Department made a finding of no good cause, pursuant to the first triage, the claimant had the right to disagree. The Department would have had to assist the client in filling out a hearing request as required by BAM 233A, page 9. In this case, even if the Claimant lost her hearing, she would have been entitled to receive a new notice of noncompliance and have the right to agree to activities outlined on the DHS 754, had one been provided.

Although the Department may have been attempting to be lenient with the Claimant, with regard to her noncompliance, and offered her several opportunities to provide the requested verification, the entire triage process was flawed because a determination of good cause/no good cause was never made for the first triage the Claimant attended, and the Claimant should have been offered a DHS 754. These failures require that the Department's actions, imposing a 3 month sanction and closure of the Claimant's FIP case, must be reversed.

Based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED.

DECISION AND ORDER

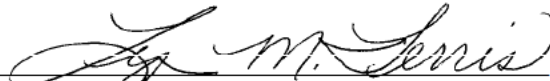
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department's determination is not upheld and is REVERSED.

Accordingly, it is ORDERED:

1. The Department's negative action, closing the Claimant's FIP case on March 1, 2010, shall be deleted. The 3 month sanction imposed on the claimant for noncompliance with the Work First program shall be removed until a good cause determination is made by the Department as provided hereafter.
2. The Department is ordered to conduct a triage and make a good cause determination. If the Department finds that the Claimant did not provide evidence of good cause for not attending the Work First program, as required, then the

Claimant shall be offered a DHS 754 to avoid a 3 month sanction of her FIP benefits.

3. The Department shall reopen the Claimant's FIP case retroactive to the date of closure, March 1, 2010, and supplement the Claimant for any FIP benefits she was otherwise entitled to receive.


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

Date Signed: 06/18/10

Date Mailed: 06/23/10

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.

cc:

