

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: 2010 29188
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2010
Wayne County DHS (49)

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 telephone hearing was held in Detroit, Michigan on May 13, 2010. The Claimant appeared and testified on her own behalf. Vernell Lyons, FIS, Rosa Council, Hearings Coordinator, and Jacqueline Jones, Jet Coordinator appeared for 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) Claimant was a FIP recipient in Wayne County.

- (2) The Claimant's FIP case was placed in closure beginning May 1, 2010 through July 31, 2010 due to the Claimant's first non compliance with the JET program.
- (3) The Claimant did not receive the Notice of Non Compliance advising her of the reason for non compliance.
- (4) The Claimant moved to a new address during the period and had difficulty receiving her mail as the mail for her complex was not being properly delivered by the postal service.
- (5) The Claimant did not receive the notice of the scheduled triage for the same reason.
- (6) A meeting was held on the scheduled triage date of 2/24/10 which the claimant did not attend. The DHS jet coordinator and the Jet program manager were present.
- (7) The DHS Jet Coordinator had no independent recollection of what occurred at the triage. Her testimony at the hearing was based on JET notes.
- (8) The Department introduced notes of the JET program which did not state the reasons for non compliance by the Claimant or the results of the triage. Exhibit 1. The Department's hearing summary indicates that the claimant was found non compliant due to no show at the triage.
- (9) No representative of the JET program testified at the hearing which was conducted pursuant to the Claimant's hearing request. No one with first hand knowledge testified as to the reasons or the basis of Claimant's non compliance.

- (10) The Claimant had difficulty with her job search efforts as she had a felony conviction and believed that was the reason she was having trouble with the JET Program as most employers do not hire felons.
- (11) Based upon notes, the DHS Jet coordinator testified that the reason for Claimant's non Compliance was attendance. No dates of other details were offered and were not based upon her personal knowledge.
- (12) Notes of the JET program were provided by the Department but do not explain the results of the triage and why the Claimant was deemed non compliant. The notes indicated that the claimant was scheduled for a triage as early as June 2009 and no triage occurred until February 2010.
- (13) This is claimant's first penalty and sanction for non compliance.
- (14) The Claimant was notified that her case would be put into closure for a penalty period of three months.
- (15) On April 25, 2010, claimant requested a hearing. The hearing request was received by the Department on March 26, 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 (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. 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.

Before the Administrative Law Judge can review a proper good cause determination, there must first be a determination of whether the claimant was actually non-participatory with the hour requirements for the JET program.

After a careful examination of the documentary evidence provided by the Department, the Administrative Law Judge rules that the Department has failed to meet their burden of proof in proving that claimant failed to participate with JET activities.

No evidence was offered that claimant had failed to participate with JET, other than the secondhand testimony of the Department representative Exhibit 1, the Case Notes does not indicate anywhere the reason for the Claimant's non compliance and the allegation of non attendance, with no indication of dates is not documentation of claimant's failure, and is completely insufficient to prove the foundation of the Department's case—that claimant failed to meet her required activities in the JET program.

Claimant's caseworker is not a JET official, and had no first hand knowledge of claimant's alleged failures. No documentary evidence was provided, beyond the aforementioned Case Notes. No notice of non compliance was provided, no notice of the JET meeting was provided as evidence. Perhaps most telling is the fact that the triage took 8 months to be scheduled and the Case Notes which state "ok to term as non-compliant due to no show at triage." Exhibit 1 No job logs were submitted, nor any indication or documentary record that claimant was not meeting the requirements. Non Compliance with JET requirements is not established by failure to attend the triage as the notes suggests.

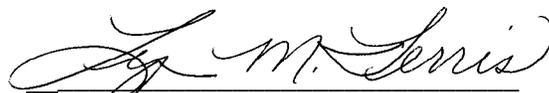
As in this matter where the Department failed to submit adequate evidence, the Administrative Law Judge will rule on the evidence that has been provided. In the current case, the evidence provided to prove the underlying case—that claimant had failed to attend JET—was insufficient. Therefore, the undersigned must rule that there was no violation of Department policies on the behalf of the claimant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was in compliance with the JET program.

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

The Department is ORDERED to remove all negative actions placed in the claimant’s file arising from the current matter, and restore claimant’s FIP benefits retroactive to the date of negative action. All penalties on the claimant’s case are to be removed. Claimant is to be referred back to Work First and rescheduled for all appropriate work-related activities.



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

Date Signed: 06/11/10

Date Mailed: 06/11/10

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.

2010-29188/LMF

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

cc:

