

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.: 2010-46013
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 4, 2010
Oakland County DHS (2)

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 November 4, 2010. The claimant appeared and testified. [REDACTED] also appeared and testified on behalf of the Claimant. [REDACTED] Jet Coordinator and [REDACTED], Michigan Works appeared on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and twelve 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 Oakland County.
2. The Claimant was assigned to attend the WorkFirst program on 12/20/09 and was required to participate 30 hours per week in job search related activities.
3. During the period March 7, 2010 through April 18, 2010, the claimant only participated in a total of three hours. Exhibit 1
4. A notice of noncompliance was mailed to the claimant on April 21, 2010 and a triage was scheduled for April 30, 2010. Exhibit 3

5. The Claimant had been given Form 754 at a triage in March 13, 2010. Exhibit 7
6. The Claimant was given a 3 month sanction at a prior triage on October 30, 2008, for noncompliance when good cause was not found. Exhibit 5
7. At a previous triage held February 20, 2010, the triage was turned into a progress triage to offer the Claimant an opportunity to begin attending the WorkFirst program and the Claimant agreed to meet her participation requirements so this triage did not count against the Claimant. Exhibit 8
8. At the triage on April 30, 2010, the Claimant did not provide any supporting documentation to demonstrate good cause. The Claimant did not demonstrate that she had housing issues or problems with her children. The Claimant signed Form 754 and was given the opportunity to demonstrate compliance. Exhibit 7.
9. After the April 30, 2010 triage, the Claimant was called and emailed to tell her about a mistake made regarding offering her the Form 754.
10. The client agreed to take counseling classes for herself and her children.
11. A Notice of Case Action was issued by the Department on May 15, 2010, which sanctioned the Claimant's FIP and FAP case for a one year period beginning 6/1/10 through 5/31/11. Exhibit 6
12. The Claimant's reason for non participation in the WorkFirst program was due to the Claimant's children's problems which she testified were due to their non attendance at school or being kicked out of school. The Claimant testified that two of her children suffer from bipolar disease and was receiving counseling.
13. The Claimant did not provide documents at the hearing or at the triage to demonstrate the various problems she was having that would support her testimony as to why she could not attend the WorkFirst Program.
14. The Claimant testified she provided the documentation to support good cause several days after the hearing.
15. The Claimant also testified that she did her job search at home after speaking with the WorkFirst counselor she was assigned to.

16. The Claimant was attending school in February 2010, but had to drop out because she was no longer able to attend school.
17. The Department did not receive additional documents from the Claimant after the triage in April 2010. The WorkFirst program also did not receive those documents from the Claimant.
18. When the last triage was held on 4/30/10, the Department erroneously thought that it still had an opportunity to allow the Claimant to receive Form 754. The Claimant was not given an opportunity to submit further documentation and the case was closed. Exhibit7
19. The Claimant filed her request for a hearing on May 19, 2010 protesting the closure of her FIP cash assistance case and reduction of her FAP benefits. The hearing request was received by the Department on May 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 (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. 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. Based on the record presented the Claimant was not attending the WorkFirst program and meeting the 30 hour participation requirement. There was no evidence submitted by the Claimant to indicate she was in compliance in February, March and April 2010 or any other specific evidence detailing good cause and the dates she did not attend due to school problems with her children.

An additional problem was that the Department wanting to give the Claimant another chance, offered her once again Form 754 at the triage which was a mistake. That form indicated that the Claimant had to begin performing 30 hours of job search before May 3, 2010. Exhibit 7. The testimony of the Department on this point was contradictory and confused no doubt because of the mistake. Clearly given the serious sanction that was ultimately applied to the Claimant's benefits, a one year case closure, and a failure to advise the Claimant prior to closure what the problem was and that a mistake had occurred another triage must be held and the Claimant be given another opportunity to present good cause why she did not meet the 30 hours per week job search requirement.

The Administrative Law Judge must observe that the Claimant has been given several opportunities to either fully participate or demonstrate with documentation that she cannot attend during the period after February 2010 due to her children's problems and or that she is obtaining counseling for herself and her children and the dates such attendance occurred. In fact the claimant began to be non compliant within weeks of

being given a progress triage rather than a full triage which allowed her FIP benefits to be maintained.

The testimony offered by the Claimant by itself did not support a basis for a finding of good cause. As previously requested by the Department at the triage the Claimant needs to demonstrate good cause and must do so my testimony backed by documentation of dates and times when events not within the Claimant's control occurred and caused her non compliance with the 30 hour participation requirement. In determining whether good cause has been demonstrated for non compliance with a JET requirement the standard to be applied is provided in BEM 233A page 3:

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. A claim of good cause must be verified and documented for member adds and recipients.

While in the first instance, addressing a situation where a child is kicked out of school may be a reason for good cause and it may be out of one's control and thus potentially a basis for good cause, the basis for the good cause must be verified and documented. The Claimant did not provide this documentation.

After a careful examination of the documentary evidence provided by the Department, and the testimony of the witnesses the Administrative Law Judge has determined that the Department has not met its burden of proof based on the fact that it led the Claimant to believe that she was given another chance and that her case would not close. Based on the form 754 mistake and other confusion after the notice of case action was sent out the Department is required to hold another triage and the Claimant is to be offered another opportunity to demonstrate good cause. Therefore, the undersigned must rule that the Department's finding of no good cause and the imposition FIP case closure for twelve months was in error and must be reversed. BEM 233A.

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 no good cause and the imposition of a 12 month closure of the Claimant' FIP case was not appropriate and in error.

Accordingly, it is ORDERED:

1. The Department shall conduct another triage to determine whether the Claimant's non compliance with the JET program 30 hours job search requirement was for good cause. The triage will consider the Claimant's

participation with regard to meeting the job search from February 20, 2010 through the date of triage on April 30, 2010.

2. The Department shall also redetermine by review of its records before the triage ordered by this decision, the actual number of form 745 forms and triages resulting in sanctions which occurred prior to the triage held on April 30, 2010 to insure their records are correct and that a one year sanction would be appropriate.



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

Date Signed: 11/29/2010

Date Mailed: 11/29/2010

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.

LMF/jlg

cc:

