

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.: 2010-48092
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 13, 2010
DHS County: Wayne (55)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on September 13, 2010. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS followed its own procedures in processing the closure of Claimant's Family Independence Program (FIP) case for noncompliance?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On or before August 10, 2007, Claimant began receiving FIP benefits and participated in the Jobs, Education and Training (JET) Work First program.
2. On August 21, 2007, and also on October 1, 2008, DHS found Claimant to be in noncompliance with the JET program, and that there was no good cause for the noncompliance on either occasion.
3. On July 8, 2010, DHS sent a "Notice of Noncompliance" to Claimant, containing the following information:
 - a. July 6, 2010, date of noncompliance.

- b. Reason for decision, "No participation in required activity."
 - c. Penalty documentation was not on the exhibit submitted at the hearing.
 - d. The scheduled date of triage was July 20, 2010.
4. On July 20, 2010, a triage conference was held. It was attended by Claimant, [REDACTED] (last name and job title unknown) from the [REDACTED].
 5. On July 20, 2010, at the triage DHS determined that Claimant was in noncompliance without good cause.
 6. On July 20, 2010, DHS sanctioned Claimant for a third incident of noncompliance. The penalty is a one-year disqualification from FIP beginning September 1, 2010.
 7. On July 27, 2010, Claimant filed a request for hearing.

CONCLUSIONS OF LAW

FIP was established by the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code Section 601, *et seq.* DHS administers FIP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals can be found online at www.michigan.gov/dhs-manuals.

DHS has correctly identified BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP," as the policy and procedure applicable in this case. Item 233A begins with the Department's Philosophy:

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. **Our focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause.**

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such

compliance have been identified and removed. The goal is to bring the client into compliance.

Noncompliance may be an indicator of possible disabilities. Consider further exploration of any barriers. BEM 233A, p. 1 of 13. (Bold print added for emphasis.)

BEM 233A sets forth a detailed procedure that must be followed when processing a FIP case closure:

PROCESSING THE FIP CLOSURE

Follow the procedures outlined below for processing the FIP closure:

- Send a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance, within three days after learning of the noncompliance. You must include the following information on the DHS-2444:
 - The date(s) of the noncompliance.
 - The reason the client was determined to be noncompliant.
 - The penalty that will be imposed.
 - Schedule a triage to be held within the negative action period.
- 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. Document the good cause determination on the sanction detail screen. BEM 233A, pp. 7-8 of 13. (Bold print in original.)

BAM 233A also provides for reinstatement as follows:

Reinstatement

Reinstate the case when the following conditions have been met:

- The FIP closed for noncompliance with employment and/or self-sufficiency-related activities, **and**
- The client met the requirements outlined above, see First Case Noncompliance Without Loss of Benefits **and**
- The case closed in error. BEM 233A, p. 12 of 13. (Bold print in original.)

This legal requirement is consistent with the reasons for reinstatement set forth in BAM 205:

REINSTATEMENT REASONS

All Programs

Reinstatement restores a closed program to active status without completion of a new application.

Agency error reinstatement reasons are:

- Program closed due to incorrect information entered in Data Collection.
- Redetermination packet received timely but not logged into Data Collection.
- Other agency error.

Other reinstatement reasons are:

- Client complies with requirement that caused program closure, on or before the timely hearing request date.
- Program closed with or without timely notice, and a timely hearing request is received.
- Program reinstatement ordered by hearing decision. BAM 205, p. 1 of 3. (Bold print in original.)

Based on all of the testimony and exhibits presented and on the entire case as a whole, I conclude that the DHS requirements for processing a FIP closure were not followed. I determine that DHS is in error and is REVERSED, and Claimant's FIP case shall be reinstated in accordance with all DHS policies and procedures. I next set forth the reasons for my decision.

I base my decision on all of the above legal requirements, and, in particular, I determine that the four-step procedure in BAM 233A, pp. 7-8, was not followed in this case. The first step DHS must take is to specify the date of noncompliance. DHS stated that July 6, 2010, was the date of noncompliance, but no evidence or testimony was presented at the hearing to prove that anything ever happened on July 6. There is absolutely nothing in the record to prove by clear and convincing evidence that July 6, 2010, was a date on which noncompliance occurred. I can only conclude that Claimant did not fail to comply on July 6, and that, if noncompliance occurred, July 6 is the incorrect date.

I determine that the purpose of the policy requirement that DHS must supply a date or dates for the noncompliance is so that the claimant will know and be informed as to exactly when the noncompliance occurred. With such information, a claimant can then detail their activities on that date and may present evidence to verify their own actions. DHS' failure to provide a specific date denies Claimant a fair legal process in that the Claimant has no way to know when the alleged violation occurred, or even if it occurred at all. I find that DHS failed to fulfill the first procedural requirement of BEM 233A. BEM 233A, p. 8.

I turn next to the second procedural requirement in BEM 233A, which is that DHS must state its reason for asserting noncompliance. In this case, DHS states the reason for noncompliance as, "No participation in required activity." I conclude and decide that this statement is overly broad in that it is amply clear from the record in this case and, indeed, DHS agrees, that Claimant participated in numerous required activities. It cannot be said on this record that Claimant put "no participation" into the program. I also determine DHS' stated reason to be overly vague in that it refers to "required activity" without particularizing what that required activity is. I conclude that DHS has failed to identify with adequate specificity what act of noncompliance it alleges Claimant committed.

Similar to the requirement that DHS provide the date of the occurrence, the second procedural requirement is necessary under the law so that FIP closures occur for reasons that can be identified, known and understood by all. In this case, DHS has failed to meet the second procedural requirement, thus depriving Claimant of her entitlement to fair and impartial treatment from the State of Michigan.

I turn now to the third procedural requirement in BEM 233A, which is that DHS must state in the Notice of Noncompliance the penalty which will be imposed. The Notice provided at the hearing consists of only one printed one-sided page. This page does not contain penalty details but refers Claimant to "page two." No page 2 was provided at the hearing. In this incomplete record, I do not see that there is clear and convincing evidence that penalty information was provided to Claimant. While the testimony at the hearing was that the penalty was to be a one-year disqualification from FIP, in this

record I do not know if this is correct, and I do not find that it is a sufficient substitute for the legal requirement of written notice of the penalty. I, therefore, conclude that the third requirement of BAM 233A, p. 8, was not met as well.

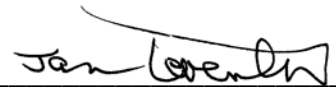
Last, I look to see if the fourth and final requirement of BAM 233A procedure was followed. This is, "Schedule a triage to be held within the negative action period." The Notice clearly states July 20, 2010, as the triage date and, accordingly, I find that, based on clear and convincing evidence, DHS has met the fourth BEM 233A requirement.

I determine that BEM 233A's four procedural requirements are at the heart of the Department Philosophy, as stated on page 1, paragraph 1, of BAM 233A. These four procedural requirements are, in essence, the means by which DHS establishes its Philosophy as effective practice. Having found that three of the four procedural requirements of BEM 233A were not achieved, I find that DHS is in error in that it failed to follow procedure and, thereby, failed to implement the Department Philosophy. DHS is accordingly REVERSED.

DHS shall REINSTATE Claimant's FIP case on the appropriate date, which in the record before me appears to be September 1, 2010. DHS shall provide Claimant with appropriate access to JET programs in accordance with all DHS policies and procedures. BEM 233A, p. 12; BAM 115, pp. 4, 17; BAM 205, p. 1.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, determines that DHS' action was in error and must be REVERSED. DHS shall REINSTATE Claimant's FIP benefits, with access to all entitlements to JET programs, in accordance with all DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 14, 2010

Date Mailed: September 15, 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

2010-48092/JL

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.

JL/pf

cc:

