

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: 2010-13098
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 8, 2010
Wayne County DHS (55)

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 on April 8, 2010 by the undersigned by telephone from Detroit. The Claimant appeared and testified in her own behalf. The Department also appeared through its representatives Canisha Carter, FIM and Francine Harrison, Caseworker who testified on behalf of 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) Claimant allegedly failed to meet her 20 hour obligation with the JET program as a volunteer for Habitat.
- (3) Claimant was scheduled for a triage on November 24, 2009. Exhibit 1
- (4) Claimant attended the triage.
- (5) A DHS-71, Good Cause Determination, was filed on September 1, 2009 and stated that claimant did not have good cause.
- (6) At the hearing, the Claimant produced evidence in the form of signed attendance sheets for JET participation for the months of July 2009 through November 2009. Claimant Exhibit 1
- (7) The Department assessed a second penalty and sanction as this was the claimant's second triage.
- (8) The Claimant's Jet supervisor did not attend the hearing and there were no notes regarding the triage and the basis for finding no good cause.
- (9) The claimant turned in her time sheets every week for her participation with Habitat, which were signed by her supervisors. Claimant Exhibit 1
- (10) The Claimant left the paperwork with the Jet front desk when her caseworker was not available. The Claimant also gave her supervisor the direct phone numbers of her supervisors at Habitat to confirm her attendance. The Claimant's caseworker did not confirm her attendance and made no attempt to contact Habitat.
- (11) The Claimant reapplied for FIP benefits in March 2010 and began receiving benefits as of April 1, 2010.
- (12) On January 1, 2010, claimant was notified that her case was placed into closure for a penalty period of three months.

- (13) On November 27, 2009, the claimant requested a hearing protesting the closure of her FIP benefits for non compliance with the work first requirements.

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, and the Claimant, 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. The Claimant’s testimony was credible and forthright, and the Claimant provided proof of her attendance for the period in question. The Department had no notes of the triage meeting and did not have anyone from the JET program, or her supervisor at Jet, present at the hearing. The Claimant, through her submission, proved her compliance and attendance. and the evidence she presented was not refuted or rebutted by the Department. Claimant Exhibit 1

No evidence was offered that claimant had failed to participate with JET, other than the secondhand testimony of the Department representative. Department Exhibit 2, which purports to show that claimant was not meeting her hour requirements. This evidence, MIS notes entered in the system, lacks specificity and does not articulate the actual dates the Claimant was non-compliant. No notes by the actual Jet program were provided that gave dates and times of absences. The notes presented by the Department are not adequate documentation of claimant's alleged failures to participate and are insufficient to prove the foundation of the Department's case—that claimant failed to meet her required activities in the JET program.

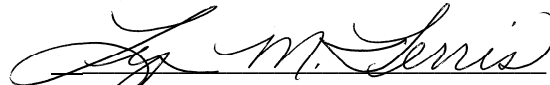
Claimant's caseworker is not a JET official and had no first hand knowledge of claimant's alleged failures; her knowledge being based solely on what the Jet program provided to her. No documentary evidence was provided, beyond the aforementioned case notes. Department Exhibit 1. If the Department fails to submit adequate evidence, the Administrative Law Judge is required to 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 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 during the months of July, August, September, October through November 3, 2009, and did not fail to participate with work-related activities.

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 from the Triage held November 24, 2009, and restore claimant's FIP benefits retroactive to the date of negative action, January 1, 2010. All penalties on the claimant's case are to be removed. Claimant is to be rescheduled for all appropriate work-related activities.



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

Date Signed: 05/07/10

Date Mailed: 05/13/10

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

cc:

