

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: 2010-15336
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 3, 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 Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit Michigan on March 3, 2010. The Claimant and her authorized representative appeared. The Department was also represented and appeared.

ISSUES

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for non-compliance with work-related activities?

Did the Claimant demonstrate good cause for failure to attend the JET program?

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 and FAP recipient in Wayne County.
- (2) The Claimant was denied a deferral from JET participation and was found by the Medical Review Team to be work ready with limitations on August 17, 2009.

Exhibit 4

- (3) The claimant was scheduled to attend the JET Program and received a JET appointment notice for August 31, 2009 appointment at 8:30 a.m. Exhibit 1
- (4) The Claimant signed in and attended the JET appointment on August 31, 2009 but had to leave early due to medical appointments.
- (5) The Claimant attended JET on another day but could not recall the date and had to leave early again due to a medical appointment for physical therapy and to see an urologist. The Claimant reported to JET on one other occasion but could not recall the date.
- (6) The Claimant attends a methadone clinic 2 ½ days a week and was assigned to attend this clinic at the time she was scheduled for JET.
- (7) The Claimant currently is seen twice a week by an occupational therapist to assist her in organizing her day and life.
- (8) The claimant has a traumatic brain injury as a result of an automobile accident in [REDACTED], 2008 which affects her ability organize her life and is overwhelmed with details such as, recalling whether she have received documents and dates.
- (9) The Claimant was sent a Notice of Non Compliance on October 10, 2009 for failing to report to work first and a triage meeting was scheduled for October 14, 2009. Exhibit 2
- (10) The Claimant did not receive the Notice of Non Compliance and did not attend the triage.
- (11) This was the Claimant's first case of alleged non compliance with the JET program.
- (12) The Department did not hold a triage pursuant to the Notice of Non Compliance.

- (13) The Department did not make a finding of good cause but did put the Claimant's case into closure.
- (14) A Notice of Case Action dated October 20, 2009 was sent to the Claimant as a result of her not attending the triage. The Claimant did not recall receiving the Notice of Case Action. Exhibit 3
- (15) Pursuant to the Notice of Case Action, the Claimant's FIP benefits were terminated for three months on December 1, 2009 for failing to participate in the JET program without good cause.
- (16) The Claimant's FAP benefits were terminated on December 1, 2009 causing her group's benefits to be reduced.
- (17) On January 7, 2009, the Claimant requested a hearing disagreeing with the Department's termination of her FIP and FAP benefits.

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. **Good cause must be considered, even if the client does not attend.** 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.

In the current case, the Department's procedures utilized to address the Claimant's non-participation were inadequate and did not follow the Policy in several regards. Based on the testimony of the Claimant, legitimate questions were also raised regarding her alleged non compliance. The Claimant attended JET on three occasions and signed in with the program but was told to leave immediately because she had to leave early for medical appointments and could not stay the whole day.

BEM 233A requires the Department to hold a triage and make a good cause determination, even if the claimant does not show up for the triage. The Department admitted that it did not hold a triage. The Department has presented no evidence that a good cause determination was ever made. The Hearing Summary, states that the case was put into negative action because claimant did not attend the triage. No mention of an independent good cause determination is made. Therefore, it is concluded that a good cause determination was not made beyond noting that claimant did not show up for the triage.

The evidence set forth in the hearing file presented by the Department clearly states that the reason for the noncompliance assessment was because claimant did not show up for the triage. The Department did not present any other evidence such as JET sign-in sheets for the period in question to demonstrate the claimant did not sign in, nor were JET representatives available for the hearing. There also was no testimony that JET was consulted with directly. The Department apparently relied on the fact that it did not receive any fax from JET as the basis for finding the Claimant did not attend the program and was noncompliant. Based on these facts and circumstances, it is found that the Department did not make an individual assessment of good cause and did not hold a triage as required. This is plain error.

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. 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, it is found that the Claimant did have good cause for her failure to attend JET. The claimant suffers from a closed head injury. The claimant is required to attend a methadone clinic two days a week and could not stay at JET after she had signed in because she had to attend medical appointments for her physical problems as a result of her prior automobile accident. The Claimant had ongoing medical conditions related to her automobile accident that resulted in illness due to her physical condition and injuries that necessitated attendance at various medical appointments.

This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures and that the claimant's case should not have closed as good cause exists for the Claimant failure to attend the JET program.

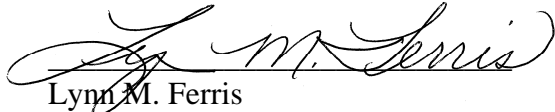
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was in error when they failed to hold a triage and make a good cause determination. The Claimant has also established good cause for her non compliance in the JET program.

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

- (1) The Department is **ORDERED** to reopen claimant's case and reinstate FIP and FAP benefits retroactive to the date of case closure, December 1, 2009.

- (2) The Department's negative action for noncompliance, effective 10/20/09, shall be deleted.
- (3) The Department shall supplement the Claimant for lost benefits, if any, she was otherwise entitled to receive.



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

Date Signed: 03/24/10

Date Mailed: 03/26/10

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:

