

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.: 201025906

Issue No.: 1021

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

May 19, 2010

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 hearing received on March 8, 2010. After due notice, a telephone hearing was conducted on May 19, 2010 from Detroit, Michigan. The Claimant appeared and testified. [REDACTED], JET Case Manager appeared on behalf of the Department.

ISSUE

Whether the Department properly issued a negative action and closed Claimant's Family Independence Program ("FIP") benefits for a failure to attend Work First effective 3/8/10?

FINDINGS OF FACT

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

1. Claimant was an active FIP recipient who was referred to Work First.

2. On 1/7/10, Claimant provided the Department with a doctor's note indicating restrictions of "no heavy lifting, no exposure to noxious fumes, no prolonged standing without sufficient breaks," due to pregnancy. (Exhibit A and Exhibit 2, p. 4).
3. Claimant missed two Fridays from Work First, 1/15/10 and 1/22/10, where she was required to do six hours of outside job search requiring her to physically appear at potential places of employment.
4. Claimant testified that she was not able to do the job search by telephone as she did not have an adequate phone available. Claimant also testified that she did not have computer access or transportation to Work First in order to use the Work First computer.
5. Claimant also missed 1/19/10 due to a doctor's appointment with a new OB/GYN.
6. On 1/28/10, the Department received a doctor's note requesting deferral for Claimant from Work First until after her six week postpartum examination. (Exhibit 1, p. 3).
7. On 2/23/10 a triage was held and the Department did not find good cause for the missed hours. Therefore, the Department terminated Claimant's FIP benefits effective 3/8/10 for noncompliance.
8. On March 8, 2010, the Department received the Claimant's written hearing request.

#### 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 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 Reference Tables (RFT).

Federal and State laws require each work eligible individual in a FIP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A. All work eligible individuals who fail, without good cause, to participate in employment or self-sufficiency-related activities will be penalized. BEM 233A. Failure to appear at a JET program results in noncompliance. Id. 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. A client with a condition or impairment that is pregnancy-related must be considered for deferral. BEM 230A, p. 12.

The Department is to determine good cause based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A, p. 7.

In this case, the Claimant testified that she was unable to perform her job search activities on two Fridays due to her inability to stand for extended periods. Claimant testified that she would have needed to be out applying for jobs in person for six hours on each of those days. The Claimant gave credible testimony that she could not do the job search by telephone and that she

had no transportation to get computer access at the Work First site. The Department documents support Claimant's testimony by indicating that Claimant was having transportation issues.

Throughout the hearing, the Department maintained that it did not know about Claimant's medical restrictions prior to the noncompliance. However, the Administrative Law Judge finds that Claimant gave notice to the Department of her doctor imposed restrictions of no excessive standing on 1/7/10. (Exhibit A). The Update/Case View notes reveal that Claimant submitted the note indicating that she could return to work on 12/10/09, (Exhibit 2, p. 4) and the same doctor's note shows restrictions upon Claimant's return to work. Furthermore, on 1/28/10, the Department received a note from the doctor's office requesting that Claimant be deferred from Work First until after her six week post partum exam due to restrictions of no heavy lifting or prolonged standing.

According to the regulations, the Department should have considered all of this evidence at the good cause hearing. That is precisely why individuals are entitled to a triage - to be able to present evidence of good cause before being terminated from the program. The Department should take note of BEM 233A, p. 7, indicating that both evidence available at the triage AND at the time of the noncompliance shall be considered.

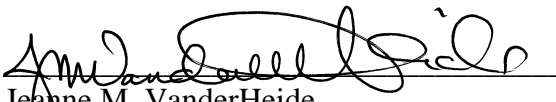
After reviewing all the evidence, the Administrative Law Judge finds that the Claimant has shown good cause that she was physically unfit for the job activity. Accordingly, based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department's determination is not upheld.

Accordingly, it is Ordered:

1. The Department's decision to close Claimant's FIP benefits effective 3/8/10 is REVERSED.
2. The Department's negative action on or about 1/26/10 for JET noncompliance shall be deleted.
3. The Department shall reopen Claimant's FIP case from the date of closure and supplement the Claimant with any lost benefits she was otherwise entitled to receive.
4. The Department shall defer Claimant from JET participation following the recent birth of her child pursuant to applicable regulations.

/s/   
Jeanne M. VanderHeide  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 10, 2010

Date Mailed: June 10, 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.

JV/htw

cc:

