

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: 2010-26974
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2010
Macomb County DHS (20)

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 hearing was held on May 19, 2010 by the undersigned by telephone from Detroit. The Claimant appeared and testified in her own behalf and [REDACTED], the Claimant's mother, also appeared and testified. The Department also appeared through its representative Roxie Shintoski, Jet Worker.

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 Macomb County.
2. Claimant was deferred from the Work First program to attend a barber school which she completed on January 21, 2010.

3. The claimant advised her caseworker when she finished school.
4. The claimant also provided records on a weekly basis for attendance as required by the Work First program.
5. The Department sent a notice of noncompliance and scheduled a triage for February 3, 2010.
6. The claimant did not attend the triage as she did not receive the notice of non compliance and notice of the triage appointment.
7. The Department did not provide or present documents as evidence at the hearing demonstrating that the notice of non compliance action, triage appointment, and the notice of case action was sent to the claimant and where it was sent.
8. At the hearing, the claimant confirmed her correct address which is the address that the Department has available to it.
9. The Department terminated the claimant's cash assistance benefits, FIP, on March 1, 2010 when she did not attend the triage.
10. The record, as presented by the Department, is unclear and no one with direct and actual knowledge of the issues involved with the claimant's attendance issue, with regard to the JET program, was present for the hearing.
11. The Claimant requested a hearing on February 8, 2010, which was received by the Department on February 9, 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 (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.

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 to demonstrate that the claimant received a notice of non compliance and notice of the triage appointment. Furthermore, no evidence was provided by the Department to show that the notice of non compliance was sent and where it was sent.

The Claimant's testimony was credible and forthright that she provided records of her attendance at barber school consistently to the JET Program. After considering the record as a whole, it is found that the Claimant also did not receive the triage notice. Based on the lack of notice of the triage, the Department is required to send the Claimant a new notice of Non Compliance and reschedule the triage to allow the claimant an opportunity to have a triage and demonstrate good cause, or be offered a DHS form 754 if good cause can not be demonstrated. BEM 233A.

The Department had no notes of the triage meeting and did not have anyone from the JET program to indicate where the notice of noncompliance was sent. Therefore, the claimant's testimony that she did not receive it was not refuted or rebutted by the Department. No evidence was offered that claimant had failed to participate with JET, other than the secondhand hearsay

notes of the Case Notes. This decision was also influenced by the Claimant's, otherwise, excellent attendance record and compliance with the Work First program.

Claimant's caseworker is not a JET official with the JET and had no first hand knowledge of claimant's alleged failures to provide attendance records, her knowledge being based solely on what the JET program provided to her and what documents providing notice of non compliance and the triage she believed the Bridges computer program sent to the Claimant. No documentary evidence was provided, beyond the aforementioned case notes. 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 received a notice of non compliance and triage appointment—was insufficient. Therefore, the undersigned must rule that no notice was given and that a new notice of non compliance and triage must be held.

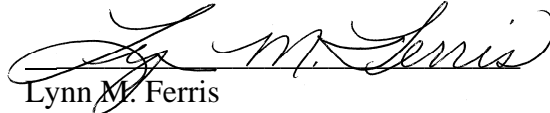
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not receive the Notice of Non Compliance and triage appointment and, therefore, her FIP case was closed improperly. 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 February 4, 2010.

The Department is required to reopen the Claimant's FIP case and restore claimant's FIP benefits retroactive to the date of negative action, March 1, 2010.

All penalties on the claimant's case are to be removed. Claimant is to be rescheduled for a new triage and a new notice of non compliance and triage appointment shall be sent to the client.



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

Date Signed: 06/21/10

Date Mailed: 06/23/10

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:

