

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-34307
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 14, 2010
DHS County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Rhonda Craig

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. The hearing in this matter was conducted by Administrative Law Judge Michael Herendeen. Judge Herendeen was not available to write the decision in this matter. The undersigned Administrative Law Judge has written this hearing decision after review of all evidence in the record including the recording of the hearing. After due notice, a telephone hearing was held on June 14, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services (department) properly sanction claimant's Family Independence Program (FIP) case due to noncompliance with the Jobs Education and Training program (JET) requirements?

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 and was required to participate in JET.
2. As a part of JET, claimant began working on December 1, 2009. She was employed through the Michigan Works Agency (MWA) which required her to provide documentation of hours worked and amount paid.
3. Claimant's employer failed to provide claimant with the needed verification and claimant informed the department of this fact.
4. Claimant failed to provide the documentation.

5. On December 23, 2009, the MWA found claimant in noncompliance with JET due to her failure to provide the required documentation.
6. Claimant was fired from her job on December 31, 2009.
7. A triage was held on January 5, 2010.
8. The department found claimant noncompliant with JET activities and sanctioned her FIP benefits effective February 26, 2010.
9. Claimant requested a hearing contesting the sanctioning of her FIP case.

CONCLUSIONS OF LAW

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, formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Manual (BRM).

The Department requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 233A. All work-eligible individuals (WEIs) are required to participate in the development of a Family Self-Sufficiency Plan (FSSP) unless good cause exists. BEM 228. As a condition of eligibility, all WEIs must engage in employment and/or self-sufficiency-related activities. BEM 233A. A WEI is considered noncompliant for failing or refusing to appear and participate in JET or other employment service provider. BEM 233A. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are based on factors beyond the control of the noncompliant person. BEM 233A. Failure to comply without good cause results in FIP closure. BEM 233A. The first and second occurrences of noncompliance result in a three-month FIP closure. BEM 233A. The third occurrence results in a twelve-month sanction.

JET participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. In processing a FIP closure, the department is required to send the client a notice of noncompliance, DHS-2444, which must include the date(s) of the noncompliance; the reason the client was determined to be noncompliant; and the penalty duration. BEM 233A. In addition, a triage must be held within the negative action period. BEM 233A. A good cause determination is made during the triage and prior to the negative action effective date. BEM 233A.

In the present case, this Administrative Law Judge cannot find that claimant was noncompliant with JET. Claimant was required to provide documentation of hours worked and amount paid. At the hearing, claimant testified that she could not turn in the documentation because her employer failed to give her any verification. At the hearing, the department representative conceded that the department should have sent a Verification of Employment form to the employer or tried another means of obtaining the information prior to finding noncompliance. Claimant has good cause for failing to provide the documentation regarding employment since obtaining the documentation was beyond her control. The department also argues that claimant is noncompliant with JET because she was fired from her job. Under BEM 233A, a client can be found noncompliant if they are fired for misconduct or absenteeism (not for incompetence). The department has not presented any evidence regarding why the claimant was fired. Absent this evidence, there is no basis to find that claimant was noncompliant due to the firing.


Accordingly, this Administrative Law Judge finds that the department's sanctioning of claimant's FIP case due to noncompliance was in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that claimant was not in noncompliance with JET activities and that the department's action in sanctioning claimant's FIP case was in error

AND IT IS ORDERED

That the department reinstate claimant's FIP benefits retroactive to the date of closure or sanction, if she is otherwise eligible.



Rhonda Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 14, 2010

Date Mailed: September 14, 2010

2010-34307/RC

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.

RC/pf

cc:

