

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: 2010-36671
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 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 hearing was held on June 17, 2010 by the undersigned by telephone from Detroit. The Claimant appeared and testified in her own behalf and [REDACTED], her mother, also appeared as a witness. The Department also appeared through its representative Deborah Orear, FIS Specialist, Harold Allen Supervisor, and Nita Bahtt, Triage Manager, TWW & Associates appeared and 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 attended the Work First Program on a weekly basis at her assignment to a vocation program at the [REDACTED]. Claimant did not turn in her weekly attendance sheets to TWW & Associates from an offsite program, the [REDACTED] [REDACTED]. Exhibit 4
- (3) The Department sent a notice of noncompliance dated May 5, 2010 for failure to comply with the Work First Program requirements. A triage was scheduled for May 18, 2010. Exhibit 2
- (4) The Triage was scheduled because the Claimant did not respond to a letter mailed to her by TWW & Associates dated March 29, 2010 seeking her immediate compliance with the JET program requirements, which states that she provide the program weekly time sheets. The TWW letter was addressed to the Claimant at the wrong address. Exhibit 7
- (5) The Claimant did not receive the letter of March 29, 2010 and thus did not respond to the letter intended by TWW to be her “Final Warning” for not bringing in her weekly attendance sheets.
- (6) The claimant attended the triage and attempted to present all of her weekly attendance records, which were not considered by the Department. Instead, the Department determined the Claimant was in non compliance because she had no reason for not coming to TWW to turn in training information. Exhibit 1
- (7) The requirement that the Claimant turn in her attendance sheets weekly is a requirement of the JET Program administered by TWW and is not a requirement of the Department or its policies.

- (8) The Claimant provided all the weekly attendance records and a Doctor's excuse for several days missed for illness. Exhibit 6
- (9) At the hearing, the claimant confirmed her correct address, which is the address that the Department has available.
- (10) The Department closed the claimant's cash assistance benefits, as of June 9, 2010, and began the three month sanction, terminating the Claimant's benefits for three months for failure to show good cause for non compliance as of July 1, 2009.
- (11) The Claimant requested a hearing on May 18, 2010 contesting the Department's decision regarding the triage and the application of a three month sanction. The hearing request was received by the Department on May 20, 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 was non participatory in the Work First

program as required by BEM 233A. The facts clearly demonstrate that the claimant did fully participate in assigned employment and/or self-sufficiency-related activities. The Claimant did not comply with the TWW requirements, which are not part of the DHS Policy and further did not have an opportunity to comply as TWW sent the Claimant's notice of her "Final Warning" to the wrong address. Had the Claimant received the letter she clearly could have demonstrated compliance and avoided a triage altogether. Exhibit 7.

The Claimant's testimony was credible and forthright that she provided records of her attendance at the vocational program. The Department, at the triage, never considered that she had actually participated in the program as was required of her. After considering the record as a whole, it is found that the Claimant was not in non compliance with BEM 233A requirement. Claimant fully attended and participated in the Work First program. The TWW requirements are not part of the DHS policy and, thus, should not serve to support non compliance. Further, this decision is also influenced by the fact that the letter sent by TWW to the Claimant, which would have allowed her to avoid triage, was never received by the Claimant and, thus, the Claimant should not be penalized for TWW & Associates error; and by the Claimant's otherwise excellent attendance record and compliance with the Work First program.

Therefore, the undersigned must rule that the finding of non compliance, with the assigned employment participation requirements, is not supported by the record, and the sanction imposed by the Department is in error and must be set aside.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department erred when it determined the Claimant was not compliant with the Work First program participation and attendance requirements. Therefore, the

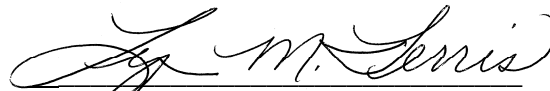
Department's determination of no good cause for the Claimant's non compliance is REVERSED. The Claimant was not non compliant; therefore, her FIP case was closed improperly. Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to remove all negative actions placed in the claimant's file arising from the current matter from the Triage held May 18, 2010.

The Department is required to reopen the Claimant's FIP case and to restore claimant's FIP benefits retroactive to the date of negative action. June 9, 2010.

The Department is directed to remove the three month sanction and Closure of the Claimant's FIP benefits.

The Department is required to refer the Claimant back to Work First for participation as a condition of the Claimant continuing to receive FIP Benefits.



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

Date Signed: 06/30/10

Date Mailed: 07/01/10

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.

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cc:

