

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-51989
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 27, 2010
Wayne County DHS (76)

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 the claimant's request for a hearing. After due notice, a telephone hearing was held on September 27, 2010. The claimant appeared and testified. [REDACTED] FIM and [REDACTED], FIS appeared on behalf of the Department and JET respectively.

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 and had applied for Child Day Care benefits while attending work first.
- (2) The Claimant was assigned to attend the Work First program on April 26, 2010 at 1:00 pm. Exhibit 1
- (3) Claimant did attend the orientation.
- (4) The Claimant testified that she could not attend JET because her sister who was to provide day care was not being paid.

- (5) The Claimant said she turned in her day care application shortly after April 26, 2010 and did not hear from the Department. The Department did not have an application for CDC in its files except the one dated June 8, 2010 which was not available at the hearing.
- (6) The Claimant also attended another WorkFirst orientation on May 12, 2010. Claimant's Exhibit 1 and Claimant's Exhibit 2
- (7) The Claimant attended WorkFirst for several weeks through week ending June 5, 2010. Exhibit 3
- (8) The Claimant was denied CDC and FAP by Application notice dated July 24, 2010. Exhibit 4
- (9) Claimant failed to meet her attendance obligation with the JET program after June 8, 2010 because she did not have child care.
- (10) Pursuant to the notice a triage on was held on August 10, 2010 and the Claimant did not appear. Exhibit 5
- (11) This was the Claimant's second notice of non compliance. Exhibit 3
- (12) Pursuant to Notice of Case Action dated August 10, 2010 the Claimant's FIP case closed due to Jet non compliance for 3 months, from 9/1/10 through 11/30/10. Exhibit 6
- (13) At the hearing the Claimant requested that she be given an opportunity to provide a warning letter which she did not bring to the hearing and agreed to fax the letter to the Administrative Law Judge after the hearing.
- (14) The Claimant faxed several documents after the hearing consisting of a June 4, 2010 letter from Michigan Works requiring her to attend a mandatory workshop; a June 4, 2010 Notice of Case Action granting her FIP cash assistance; a Jet orientation notice to attend orientation on May 10, 2010.; an updated Pacific Institute date May 14, 2010 that she completed Steps to Economic and Personnel Success; and a Certificate of Completion for Ross Innovative Employment Solutions, a Michigan Works Program, which was undated.
- (15) The Claimant could not recall receiving the Notice of triage for non compliance with the JET program.

- (16) At the triage the Department found that the Claimant did not establish good cause for her non compliance (attendance) and terminated her FIP benefits.
- (17) On August 10, 2010 the Claimant's FIP cash assistance case closed for non compliance with the WorkFirst program for 3 months.
- (18) On July 24, 2010 the Claimant's FAP application and Child Day Care (CDC) application was denied as she was found in non compliance with the WorkFirst program and was not entitled to, nor could she demonstrate need for CDC benefits. Exhibit 4
- (19) On August 23, 2010 the claimant requested a hearing protesting the closing of her FIP 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 (formerly known as the Family Independence Agency) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R400.3101-3131. 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.

Before the Administrative Law Judge can review a proper good cause determination, there must first be a determination of whether the claimant was actually non-participatory with the hour requirements for the JET program.

After a careful examination of the documentary evidence provided by the Department, the Administrative Law Judge has determined that the Department denied the CDC application because the Claimant failed to return information needed to determine eligibility. Exhibit 4. In the alternative, the Department also indicated on the record that it denied the CDC application because the Claimant was no longer attending JET as of June 8, 2010. However the case notes provided by the Department regarding the Claimant’s Work First attendance indicates that the Claimant attended the program and completed 22 hours of job search for the week ending June 5, 2010. Because of this conflict, the Claimant must be returned to the work first program and given another triage to determine what happened to her CDC application and why it was denied. If indeed the Claimant stopped attending work first because she had no child care notwithstanding an application for CDC, she should not be deemed non compliant particularly when she was attending the program for several weeks after the orientation.

In the current case, the evidence provided to prove the underlying case—that claimant had failed to attend JET—was not sufficient and was complicated by the fact that the Department denied the CDC application for the Claimant’s non participation when the case notes indicate she was participating. . Therefore, the undersigned must rule that the finding of no good cause and the imposition of a 3 month sanction closing the Claimant’s FIP case as required by BEM 233A must be set aside and is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the basis for the Department's denial of the Claimant's CDC application due to its determination that the Claimant was not in compliance with the JET program was in error and the case must be remanded for another triage and the Claimant's FIP case must be reinstated pending the out come of another triage. The sanction previously imposed closing the Claimant's case for three months must also be set aside pending the out come of the new triage.

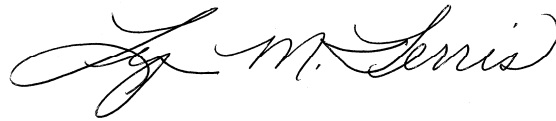
Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department's actions sanctioning the claimant and closing the Claimant's FIP case for 3 months is hereby REVERSED.

Therefore, it is ORDERED:

1. The Department shall reinstate the Claimant's FIP case retroactive to the date of closure and the three month sanction closing the Claimant's FIP case is set aside and deleted.
2. The Department shall conduct a triage and shall determine if the Claimant was in non compliance with the Work First attendance requirements and whether the Claimant had good cause for her non compliance including a consideration as to whether the reasons for the Claimant's non compliance was due to lack of child care.
3. The Department shall reinstate the Claimant CDC application retroactive to the date of application if it is found that she was attending work first at the time the application was denied for her non attendance at work first.

4. If it is determined at the triage that the Claimant timely applied for CDC and that her application should not have been denied for not attending Work First then the Claimant eligibility for CDC must be determined and any necessary verification requested and the Claimant must be returned to the Work First Program.



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

Date Signed: 10/06/2010

Date Mailed: 10/06/2010

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.

LMF/jlg

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