

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011 24665
Issue No: 1038;3029
Case No: [REDACTED]
Hearing Date: May 4, 2011
Wayne County DHS (04)

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 4, 2011. The Claimant appeared and her Authorized Representative also appeared. [REDACTED] FIS appeared on behalf of the Department. [REDACTED] from the Work First program [REDACTED] [REDACTED] also appeared and testified on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and twelve month sanction upon the claimant for non-compliance 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 and FAP recipient in Wayne County.

- (2) The Claimant was not participating with the Work First program and was placed in triage status due to non attendance.
- (3) The claimant was no call, no show for much of the month of March 2010, when the Claimant attended only 13 hours. The claimant was to attend 20 hours per week, Monday through Friday, 4 hours per day.
- (4) On March 30, 2010, the Claimant signed a compliance test to allow her to make up hours and had until April 5, 2010 to complete the make up. The Claimant failed the test.
- (5) A triage request was made by the work first program.
- (6) The Department did not hold a triage prior to closing the Claimant's FIP case and reducing the claimant's FAP benefits.
- (7) The Department did not close the Claimant's FIP case until 7/10/2010.
- (8) The work first representative, with personal knowledge, testified that no triage was held by the Department on April 6, 2010, at the appointed date and time, and that the Department representative did not discuss the reasons for the Claimant's non compliance reasons with her.
- (9) The Claimant did not receive the Notice of Non Compliance and missed the triage appointment scheduled for April 6, 2010.
- (10) The Claimant's FIP case closed for 12 months, as this was the Claimant's third sanction for non compliance.
- (11) The Department did not produce a copy of the Notice of Non Compliance and none was in the case file.

- (12) The Claimant requested a hearing on September 1, 2010, protesting the closure of her FIP cash assistance and reduction of the Claimant's FAP 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 (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. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date. **Good cause must be considered, even if the client does not attend.** BEM 233A.

In the current case, the Department's procedures towards overcoming claimant's non-participation were inadequate. Based on the testimony of the Claimant, a legitimate question was raised regarding whether a notice of non compliance was sent to the Claimant. The Claimant testified that she did not receive a notice. The work first witness, familiar with the Claimant, testified that the Claimant would have appeared at the triage as she reliably appeared at meetings. Most importantly, this witness also testified that no triage was ever held with the Department on the date and time in question, or at any time.

The fact is that BEM 233A requires the Department to hold a triage and make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. The Hearing Summary, states that the case was put into negative action because claimant did not attend the triage. No mention of an independent good cause determination is made. Therefore, as no independent evidence has been offered to show that a good cause determination was made beyond noting that claimant did not show up for the triage.

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. PEM 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. Id. The penalty for noncompliance without good cause is FIP closure. Id. at 6. If good cause is established the negative action is to be deleted. Id. at 12.

Based upon the foregoing findings of fact and conclusions of law, the undersigned must hold that the Department did not make an individual assessment of good cause. This is plain error.

This Administrative Law Judge must therefore conclude that DHS was in error in its triage procedures, and that the claimant's case should not have closed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was in error when they failed to conduct a triage and make a good cause determination.

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

Accordingly, it is ORDERED:

1. The Department shall reopen claimant's FIP case retroactive to the date of case closure.
2. The Department shall issue a new notice of non compliance and schedule and hold a triage to determine if the Claimant has good cause for non compliance during the month of March 2010.
3. The Department's negative action for noncompliance, effective 7/10/10, shall be deleted pending the outcome of the triage ordered by this decision.
4. If after a triage, it is determined that the Claimant has good cause, the Department shall issue a supplement to the Claimant for FIP and FAP benefits she was otherwise entitled to receive during the period of case closure.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 05/19/11

Date Mailed: 05/20/11

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:

