

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011 25700  
Issue No: 1038,3029  
Case No: [REDACTED]  
Hearing Date:  
April 20, 2011  
Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 three way telephone hearing was held in Detroit, Michigan on April 20, 2011. The [REDACTED] and his group member [REDACTED] appeared and testified. [REDACTED], FIS appeared 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?

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the Claimant's group member 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. The Claimant [REDACTED] and a FIP/FAP group member [REDACTED] were ongoing FIP Cash Assistance and Food Assistance (FAP) recipients.
2. On February 16, 2010, the Department closed the Claimant's FIP case and reduced the Claimant's FAP benefits due to his and the Claimant's group members non Compliance with work related activities. Exhibit 1
3. The Claimant and [REDACTED] a member of his FIP/FAP group were assigned to attend work first and completed orientation and attended the program until December 2010.
4. The claimant and [REDACTED] were sent notices of Non Compliance by the Department for failure to attend the work first program on January 14, 2011. Exhibit 2
5. A triage was scheduled for January 26, 2011 and was not attended by the Claimant or [REDACTED] because the letter arrived late and [REDACTED] was incarcerated. Claimant Exhibit 1
6. The Claimant spoke to his Department caseworker on January 28, 2011, advising that he was unable to work due to a knee injury and that [REDACTED] [REDACTED] had been incarcerated. The Claimant was asked to provide documentation of these incidents to the Department.
7. The Claimant did not provide the documentation to the Department.

8. At the hearing, the Claimant provided a doctor's note dated December 20, 2010, indicating that he was able to work but had restrictions "only desk job" because of his knee condition. The Claimant testified that he injured his knee on December 12, 2010. Claimant Exhibit 2.
9. The Claimant did not attend the Work First Program after November 23, 2010. Exhibit 3.
10. The Claimant was sent a notice of non compliance on January 14, 2011 for failure to participate in required Work First activity. A triage was scheduled for January 24, 2011. Exhibit 8
11. On December 5, 2010, [REDACTED] was hit by a car and went to the emergency room. [REDACTED] was prescribed a neck brace for soft tissue injury and was seen again by her doctor for follow up. Claimant Exhibit 1.
12. [REDACTED] was also seen on January 3, 2011 at [REDACTED] with symptoms of extreme anxiety, mood swings, bipolar disorder and schizophrenia. Claimant Exhibit 6
13. [REDACTED] was sent a Notice of Non Compliance on January 14, 2011 for failure to participate in the Work First activity. A Triage was scheduled for January 26, 2011.
14. [REDACTED] did not attend the triage as she was incarcerated for a probation violation on January 19, 2011 for 19 days and could not attend the triage.

15. [REDACTED] was in the Crisis Residential Unit of [REDACTED] from January 3, 2011 through January 11, 2011. Claimant Exhibit 1
16. [REDACTED] suffers from ongoing bipolar disorder and is currently under the supervision and treatment of a doctor. Claimant Exhibit 1.
17. The claimant requested a hearing on March 9, 2010, protesting the closure of the Cash Assistance FIP case and reduction of the Food Assistance amount he received.

#### 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.

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. As there are two individuals who must be reviewed with regard to non compliance the review for each will be done separately.

██████████ was found to be in non compliance for non attendance as of December 7, 2010, when he was sent a Notice of Non Compliance dated January 14, 2011, and was scheduled for a triage on January 24, 2011. The Claimant did not attend the triage because he testified that the Notice of Non Compliance was not received before the triage was held. The Notice was mailed on January 14, 2011 to the Claimant's correct address.

The Claimant did not advise Work First of any of the pre triage issues involving himself and his group that might have affected his attendance. The claimant never advised Work First that he had injured his back and that he was seeing a doctor. The claimant also never advised Work First that ██████████ had been injured when hit by an automobile. This information was provided for the first time at the hearing. The Claimant indicated that he spoke with the Work First program on January 28, 2011 to advise that he did not get the Notice of Non compliance until after the triage was completed, and agreed that he would submit medical documentation.

The claimant demonstrated a total lack of communication with the program with regard to his back injury and the evidence which he provided did not disqualify him from job search as he his work restriction was "only desk job because of knee" . This Doctor's letter is dated December 20, 2010, and makes no mention of the alleged injury

to his knee that is claimed. Further, no dates are indicated with reference to an injury date nor was the Claimant found to be totally or partially disabled for any period.

The Claimant also claimed that he had to attend to [REDACTED] who was hit by a car and received a soft tissue injury. Once [REDACTED] was released from the hospital, the Claimant could have resumed his attendance at Work First or if he could not attend it was incumbent on the Claimant to communicate the situation to the Work First Program and seek an excused absence. Again, the Claimant did not report that he had to care for [REDACTED] due to an injury to the Work First program or the Department until after the triage.

Based upon these circumstances, the Claimant has not demonstrated good cause, and the Department's triage finding no good cause for non compliance and 3 month sanction is correct and must be upheld. This decision was also influenced by the Claimant's lack of communication with the Department and the Work First program representative. These facts do not support a finding of good cause.

[REDACTED] presents a different set of circumstances, and the Department's determination of no good cause for non compliance due to attendance cannot be sustained by the evidence presented. The Claimant was incarcerated at the time of the triage and thus has demonstrated that she could not attend the triage through no fault of her own. BEM 233A, page 5. Additionally, the Claimant was also hospitalized twice during the period of non compliance and after. The first hospitalization due to being hit by a car demonstrates the type of incident supporting an excuse for non attendance at the Work First program. Claimant Exhibit 1. [REDACTED] was also admitted to [REDACTED] for observation on January 3, 2011, due to mental illness issues and

stress for a 7 day period. Claimant Exhibit 1. While the [REDACTED] did not seek a deferral from work first due to mental or emotional illness it appears some consideration should be to her in that regard as her work first attendance records indicate that she was required by court order to attend anger management classes and in light of the evidence presented at the hearing. Given her medical exam record it is surprising that pre screening did not discover or raise questions regarding deferral and her fitness to attend the work first program. For these reasons the Claimant is referred back to the Department as a finding of good cause is established by the record presented by [REDACTED]. The Department must consider whether the Claimant is eligible for deferral before returning her to the Work First program.

Based on the facts presented in this case, the Department sustained its burden of proof with regard to its triage finding of no good cause for non compliance for the claimant Mr. Bach and the imposition of a three month sanction. As regards Ms. Calafell, the department did not sustain its burden of proof and did not establish no good cause for non compliance and is required to make a determination as to whether a deferral from Work First is warranted and its determination of non compliance as regards [REDACTED] is reversed.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department's finding of no good cause, for failure to participate in the JET activities as regard to Claimant [REDACTED], is correct and is AFFIRMED. The Departments finding of non compliance and no good cause with regard to [REDACTED] is REVERSED.



Accordingly, it is ORDERED:

1. The Department shall reinstate [REDACTED] for both FIP and FAP benefits she was otherwise entitled to receive in accordance with Department policy retro active to March 1, 2011, the date of closure, of the FIP case and reduction of FAP benefits.
2. The Department shall remove from its records the three month sanction and finding of non compliance with the work first program with regards to [REDACTED].
3. The Department shall determine whether [REDACTED] is qualified to be deferred from the Work First program prior to requiring that she return to the program.

[REDACTED]  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 05/18/11

Date Mailed: 05/18/11

**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

