

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-29801
Issue No.: 1038, 3029
Case No.: [REDACTED]
Hearing Date: May 16, 2011
District: Wayne County DHS (15)

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 May 16, 2011. The claimant appeared and testified. [REDACTED] a witness appeared on behalf of the Claimant. [REDACTED] FIM and [REDACTED] Jet Case Manager appeared and testified on behalf of the Department. [REDACTED] a representative of the work first contractor also appeared and testified.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and twelve month sanction closing the Claimant's FIP case and reducing the Claimant's FAP benefits 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 Department issued a Notice of Non Compliance dated December 10, 2010, scheduling a triage on April 12, 2011, which listed the date, time and place where to attend the triage. Exhibit 1.
2. The Claimant received the Notice of Non Compliance.
3. A triage was held and the Claimant attempted to turn in her two weeks of job search logs but was not allowed to turn them in.

4. The claimant attempted to turn in her job search logs on February 11, 2011, but was not allowed to turn them in as she brought her child to work first which was against the rules. The Claimant was given until Monday, February 14, 2011, to turn in the job logs but was not allowed to turn them in that day as she had already been triaged. Exhibit 1
5. The claimant testified that she was not receiving bus tickets and missed a job interview as no bus tickets were made available to her.
6. The Claimant turned in one of her two missing job search logs at the hearing; the other log was torn and could no longer be submitted. Claimant Exhibit 1
7. A triage was held on April 12, 2011, and a finding of no good cause was made. The Claimant's FIP case was closed for 12 months as this was her third non compliance and her FAP benefits were reduced. Exhibit 2
8. On April 12, 2011, the Department issued a Notice of Case Action closing the Claimant's FIP case for a 12 month period and reducing the Claimant's FAP benefits due to failure to participate in Work First activities. Exhibit
9. No witness, who participated at the triage on behalf of the Department or the work first program, testified at the hearing.
10. The Claimant requested a hearing on April 14, 2011, protesting the closure of her FIP benefits for 12 months as incorrect, and the reduction in her FAP benefits due to non compliance with work related activities.

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 as signed 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.

Based on the record presented, the Claimant was found in non compliance at the triage based upon the Good Cause Determination issued for failure to turn in 2 weeks of job search logs. Even though the Claimant was told she could turn the logs in on Monday, February 14, 2011, the Claimant was not allowed to submit her job search logs for the periods in questions on Monday when she appeared to provide them. The Claimant also was not allowed to present the job search logs at the triage to demonstrate compliance. The Claimant’s testimony was un rebutted in that regard. The work first contractor correctly denied the claimant access to the program when she appeared with her child to turn in her job search logs of February 11, 2011, as their rules established that children were not allowed to be brought to work first. Exhibit 3.

This decision was also influenced by the fact that the Claimant attempted on two or possibly three occasions to submit her job search records and was denied the opportunity. It was also influenced by the fact that no one from either the Department or the work first contractor, with actual personal knowledge of the facts, was present. Lastly, the fact that the Claimant was able to produce a job search log for one of the two

weeks and offered a plausible excuse that the other sheet was no longer in a condition to be submitted, also supported the Claimant's testimony.

The Claimant did not demonstrate the best judgment in attempting to be excused for a funeral, on the day of the funeral without advance notice, and showing up at the work first program with her child in tow when the rules clearly do not allow participants in the program to bring their children. However, notwithstanding these issues the Claimant was not allowed to demonstrate compliance through a showing of good cause.

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. A claim of good cause must be verified and documented for member adds and recipients.

The Administrative Law Judge has determined that the Department has erred and has not met its burden of proof sufficient to support its closure and sanction of the Claimant's FIP case and FAP benefit reduction.

Based on the documents submitted at the hearing, the Claimant's job search record, and the testimony of all the witnesses, it is found that the Claimant was denied the opportunity to demonstrate good cause for the period of noncompliance when she was refused the opportunity to submit the job search logs and, therefore, the Department's decision to sanction her FIP case, with closure for 12 months and reduce the Claimant's FAP benefits, is in error and is REVERSED.

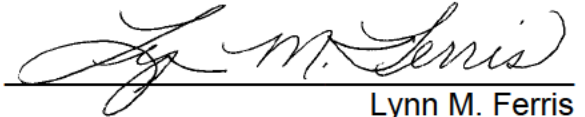
DECISION AND ORDER

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 and the imposition of a three month closure of the Claimant's FIP case is in error and is REVERSED.

Accordingly, it is ORDERED:

1. The Department shall reopen the Claimant's FIP case retroactive to the date of closure, and shall supplement the Claimant for any FIP benefits she was otherwise entitled to receive.
2. The Department shall issue a supplement to the Claimant for any FAP benefits she did not receive, as a result of being removed from her FAP group, due to the sanction for noncompliance with work related activities. The Supplement shall be retroactive to the date of case closure, unless the Claimant has continued to receive FAP benefits at the same level prior to the sanction, while her request for hearing was pending.

3. The Department shall delete the 12 month sanction and finding of no good cause, with regard to the Claimant's non compliance with Work First, and remove any relevant disqualification from the Claimant's Work First history resulting from the triage held on April 12, 2011.
4. The Department shall reassign the Claimant to the Work First program.



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:

