

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2011 30580
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
May 25, 2011
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 hearing. After due notice, a telephone hearing was conducted by the undersigned in Detroit, Michigan on May 25, 2011. The Claimant was present and testified. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly closed the Claimant's Family Independence Program Benefits ("FIP") (Cash) and imposed a three month sanction for non compliance with the Work First program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant was an on going recipient of a FIP cash assistance and Child Development and Care (CDC) benefits.

2. The claimant has consistently worked 20 hours or more at [REDACTED], while assigned and attending the Work First program, and continues to do so through the date of the hearing.
3. The claimant was required to bring in her last 2 pay stubs on January 4, 2011, to verify that she was still working.
4. The claimant did not report to Work First or bring in her pay stubs on January 4, 2011.
5. It could not be determined whether the Department made a finding of no good cause at the triage held on April 6, 2011.
6. The Claimant and the Department disagreed with the total Work First requirements she was required to meet. The claimant understood that she had to demonstrate she was working 20 hours per week. The Department representative understood that the Claimant had to bring in her check stubs and do job search activities for an additional 10 hours.
7. Prior to the hearing, the Department had reopened the Claimant's CDC case and the Claimant no longer wished to proceed with that issue.
8. A triage was held on April 6, 2011 it was the Claimant did not appear. The Triage was held due to the Claimant's poor attendance.
9. The Claimant did not attend the triage, as the Notice of Non Compliance was sent to the Claimant's old address. The Notice of Non Compliance was sent out 3/31/11.
10. The Claimant did not receive the 3/31/11 Notice of Non Compliance.
11. The Claimant has worked continuously from January 2011 through the date of the hearing, at least 20 hours per week at [REDACTED].

12. The Claimant requested a hearing on April 23, 2011, protesting the closure of her FIP cash assistance case.

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 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 Program Reference Manual (PRM).

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. **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 as it did not establish whether a finding of no good cause was made. Additionally, the Claimant did not receive the Notice of Non Compliance because it was sent to the Claimant’s old address even though she had reported her new address to the Department. Based on the testimony of the Department and the fact that no witness with actual knowledge as to what was discussed at the triage appeared and testified, it could not be determined whether a specific finding of good cause was made when deciding to close and sanction the Claimant’s case for three months. The case closure under these circumstances was not supported by the evidence and was in error.

Claimant further credibly testified that she did not receive the March 31, 2011 Notice of non compliance, and thus was not afforded an opportunity to attend the triage. Under these circumstances, the Department must conduct a new triage to afford the Claimant an opportunity to demonstrate good cause. Additionally, the failure to give

notice to the Claimant about the triage also took away the Claimant's opportunity to avoid sanctions by the demonstration of good cause and closure of her case by way of a Form 754, if she was found in non compliance without good cause.

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 "FIP closed for failure to attend triage scheduled for 4/6/11. The other exhibits which were discussed were notes from witnesses not present and which did not specifically indicate that a finding of good cause was made. Based on these facts, the Department's closure of the Claimant's case is in error and must be reversed. When a new triage is scheduled, the Claimant would be wise to provide the Department pay stubs for the period in December 2010 and January 2011, when she did not report and provide her pay stubs on January 4, 2010.

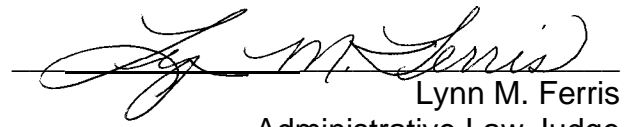
Based upon the foregoing findings of fact and conclusions of law, the undersigned must hold that the Department did not make an individual assessment of good cause prior to closing the Claimant's FIP case. This is plain error. This Administrative Law Judge must therefore conclude that DHS was in error in its lack of triage procedures, and no specific finding of good cause determination and that the claimant's case should not have closed. Additionally the Department's closure of the Claimant's FIP case was also in error as the Department sent the Notice of Non Compliance to the wrong address thus the Claimant was not properly notified of the triage appointment and her right to appear and show good cause.

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 it failed to make a finding of non compliance without good cause prior to closing the Claimant's case, and also did not provide proper notice to the Claimant of the triage appointment, as the Notice of Non Compliance was mailed to an incorrect address. Accordingly, the Department's decision in the above-stated matter is, hereby, REVERSED.

Accordingly, it is ORDERED:

1. The Department shall reopen and reinstate the Claimant's FIP case retroactive to the date of closure.
2. The Department shall issue a new Notice of Non Compliance and send it to the Claimant at her current address: [REDACTED] and shall schedule and conduct a new triage.
3. The Department shall delete the finding of noncompliance and 3 month sanction it imposed as a result of the April 6, 2011 triage from the Claimant's case record.


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

Date Signed: 06/02/11

Date Mailed: 06/03/11

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:

