

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

IN THE MATTER OF:



Reg. No: 2011 32755
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
June 9, 2011
Macomb County DHS (20)

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 June 9, 2011. The Claimant appeared and testified. Lynne Foley, Case Specialist 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?

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.
- (2) The Claimant was assigned to Work First and was triaged due to excessive absences.

- (3) On the date of her first triage, the Claimant could not attend as she was scheduled for a job interview.
- (4) The Department rescheduled a triage meeting with the Claimant, which was held on March 21, 2011, between the Claimant and the Department. No personnel from the Work First program were present. Exhibit 1
- (5) The Work First program triaged the Claimant because it alleged that the Claimant's absences exceeded the 16 hours per month absence limitation.
- (6) The Claimant provided sign in sheets, which demonstrated the dates that she attended the Work First program. The logs do not indicate the hours she attended, but these documents were all she could get from Work First.
- (7) The Claimant testified that she attended Work First on February 21, and February 22, 2011 and that, on [REDACTED], she had to take her child to the doctor and provided a doctor's excuse. The attendance records verify that she signed in on those days.
- (8) The Claimant testified that she filed her job search log on Friday, February 25, 2011.
- (9) No one from the Department or Work First with first hand knowledge about the Claimant's attendance and absences testified at the hearing.
- (10) There were no attendance sheets or job logs presented as evidence by the Department to support the case notes prepared by the Work First program. Exhibit 2

- (11) The Department issued a notice of Case Action and closed the Claimant's FIP case for 90 days for non compliance with work related activities.
- (12) The Claimant requested a hearing on April 11, 2011, protesting the closure of her FIP cash assistance case for non compliance with the Work First absence policy.

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.

After a careful examination of the documentary evidence provided by the Department, the Administrative Law Judge rules that the Department has failed to meet their burden of proof in proving that claimant failed to participate with JET activities.

No evidence was offered that claimant had failed to participate with JET, other than the secondhand testimony of the Department representative who relied upon the case notes prepared by others at the Work First program which purports to show that claimant was not meeting her hour requirements and therefore exceeded the absence limit. Exhibit 2. The case notes, consist of notes entered into the computer system by several individuals. This documentation, without the first hand testimony of the individual with knowledge of whether the Claimant attended or was absent and without actual job logs to demonstrate the notes are correct, is insufficient to prove the foundation of the Department's case—that claimant failed to meet her required activities in the JET program.

Claimant's caseworker is not a JET official and had no first hand knowledge of claimant's alleged failures. No documentary evidence was provided, beyond the aforementioned case notes. No job logs were submitted, nor any indication or documentary record that claimant was not meeting the requirements. The Claimant also had difficulty obtaining records from the Work First program and could only obtain sign in sheet for the days in question.

The Administrative Law Judge must find that the Department did not meet its burden of proof and incorrectly sanctioned and closed the Claimant's FIP cash assistance case. If the Department fails to submit adequate evidence, the Administrative Law Judge will rule on the evidence that has been provided. In the current case, the evidence provided to prove the underlying case—that claimant had exceeded the monthly absence limit, was insufficient. Based on the foregoing, the undersigned must find that the closure of the Claimant's FIP cash assistance case was in error and the Department's determination is REVERSED.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did not demonstrate that the Claimant was in non compliance with the JET program during the month of February 2011, or that her absences exceeded the Work First program absence limit, and therefore its determination to close the Claimant's FAP cash assistance case was in error and is REVERSED.

Accordingly, it is ORDERED:

- 1) The Department shall reinstate the Claimant's FIP Cash Assistance case retroactive to the date of closure and supplement the Claimant for FIP benefits retroactive to the date of closure.
- 2) The Department shall remove the sanction for non compliance from the Claimant's case record and shall correct and remove any entry in its computer system to reflect that the sanction was ruled by this decision as incorrect.

- 3) The Department shall return the Claimant to the Work First program.



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

Date Signed: 06/22/11

Date Mailed: 06/24/11

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:

