

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011 32912
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: June 9, 2011
[REDACTED]

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 June 9, 2011. The Claimant appeared and testified. [REDACTED], Eligibility Caseworker, appeared and testified on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction closing the Claimant's FIP case 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 was an ongoing FIP recipient.
2. On February 4, 2011 the Claimant was arrested.
3. On February 8, 2011 the Claimant was sentenced and incarcerated for 90 days. Claimant Exhibit 1.
4. The Department sent the Claimant a Notice of Non Compliance on March 2, 2011 which was not received by the Claimant because she was incarcerated.

5. A triage was scheduled and held on March 24, 2011 which the Claimant did not attend because she did not get the Notice of Non Compliance and was incarcerated. Exhibit 1.
6. At the triage a determination of no good cause was made and the Claimant's case was sanctioned and closed for 90 days effective May 1, 2011. Exhibit 2.
7. The Claimant could not contact the Department or Work First to advise either party that she was incarcerated while in jail.
8. The Claimant first learned that her case was closed when she saw her worker after she was released from jail and was told her case was to close.
9. The Claimant requested a hearing on April 22, 2011 protesting the closure of her cash assistance because she was not able to attend the triage because she was incarcerated.

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 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.

Based on the record presented, the Claimant had no opportunity to attend the triage scheduled for March 2, 2011 as she was incarcerated. It may also appear that the Claimant had good cause for failure to participate with the Work First program as she was arrested on February 4, 2011.

In Determining whether good cause has been demonstrated for non compliance with a JET requirement the standard to be applied is provided in BEM 233A page 3:

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.

Good Cause may be established if an Unplanned Factor or Event caused the non compliance.

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization. BEM 233A, Page 5.

Based upon the evidence submitted by the Claimant, the Department must reopen her FIP case and return the Claimant to work first for a triage to determine the period she was in non compliance and determine whether she had good cause for any absences prior to her arrest on February 4, 2011, if any dates prior to February 4, 2011 formed the basis for non compliance and were considered at the triage. After February 4, 2011, as the Claimant was incarcerated, she has established good cause based on BEM 233 A and should be returned to work first and any sanction imposed should be removed.

After a careful examination of the documentary evidence provided by the Department and the Claimant, and the testimony of the witnesses, the Administrative Law Judge has determined that the Department has erred and has not met its burden of proof. The Claimant provided documentation of good cause that she was incarcerated and thus could not attend Work First and the triage which was held in her absence. The Department's finding of no good cause and the imposition of a three month sanction closing the Claimant's FIP Cash Assistance case for three months is in error and must be 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, May 1, 2011, and shall delete the three 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 March 24, 2011.
2. If the non compliance considered by the Department at the March 24, 2011 triage arose on or after February 4, 2011, during the period the Claimant was incarcerated, then good cause for non compliance is established and the Claimant shall be returned to the Work First program by the Department.
3. If the Claimant's original triage was for non compliance for dates prior to February 4, 2011, the Department shall schedule another triage for the Claimant to determine whether the Claimant was in non compliance. If a triage is held, the Claimant shall be offered a Form 754 if any resulting non compliance is a first event of non compliance.

4. The new Notice of Non Compliance, if one is required to be sent based on paragraph 3 of this Decision and Order, shall state specifically the dates of non compliance to be considered at the triage.



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

Date Signed: June 13, 2011

Date Mailed: June 14, 2011

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/cl

cc:

