

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011 33557
Issue No: 1038
Case No: [REDACTED]
Hearing Date: June 16, 2011
Macomb County DHS (12)

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 16, 2011. The Claimant appeared and testified. Bernard Nowakowski, Jet Manager 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 non-compliance 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 assigned to attend the Work First Program on March 21, 2011. The Claimant reported on that date.
2. The Claimant was 8 months pregnant when she reported to work first orientation and was told that she might be deferred if she provided a doctor's note.

3. The Department sent a Notice of Non Compliance dated March 28, 2011, scheduling a triage on April 7, 2011. Exhibit 1
4. The claimant could not attend the triage and called her caseworker and the manager of the district office to seek a phone triage.
5. No one returned her phone calls.
6. No witness with first hand knowledge testified at the hearing as to what occurred at the triage.
7. The Department made no finding of good cause and closed the Claimant's case on the basis that the Claimant was a no show and because she did not attend the triage her FIP case was closed. Exhibit 2 (hearing summary).
8. The Claimant's FIP cash assistance case was closed, effective April 18, 2011, by notice of case action dated April 8, 2011.
9. The Claimant requested a hearing on April 26, 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 (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. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date. **Good cause must be considered, even if the client does not attend.** BEM 233A.

In this case, the Claimant was not offered a phone triage and the triage was conducted anyway. The Claimant credibly testified that she called both, her then caseworker and the Manager and no one returned her calls. Additionally, the

Department did not make a finding of no good cause at the triage. The Department confirmed that the Claimant's FIP case was closed due to the Claimant's failure to appear to determine good cause. This procedure is clear error.

In the current case, the Department's procedures towards overcoming claimant's non-participation were inadequate. Most importantly, the Department representative advised that a triage was held but no determination of good cause was made and the case closed because the Claimant failed to attend the triage.

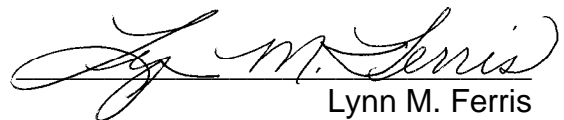
The fact is that BEM 233A requires the Department to hold a triage and make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. No proof of an independent good cause determination being made from any individual with actual knowledge was presented. This decision was also influenced by the fact that the Claimant requested a phone triage and her request was never responded to by the Department. Therefore, based upon the foregoing findings of fact and conclusions of law, as no independent evidence has been offered to show that at the triage, which was held, a good cause determination was made. The closure of the Claimant's FIP was in error and must be REVERSED.

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 conducted a triage and failed to make a good cause determination. The Department's decision in the above-stated matter is, hereby, REVERSED.

Accordingly, it is ORDERED:

1. The Department shall re open claimant's FIP case retroactive to the date of case closure, April 18, 2011.
2. The Department shall issue a new notice of non compliance and schedule and hold a triage to determine if the Claimant has good cause for non compliance.
3. The notice of non compliance issued by the Department shall include the dates of the non compliance and the reason(s) for non compliance that the Department will consider at the triage. The Department shall make a good cause determination at the triage.
4. If the triage ordered herein is the Claimant's first triage, and no good cause for non compliance is found at the triage, the Claimant's shall be offer a Form 754.
5. The Department's negative action for noncompliance and the imposition of a sanction closing the claimant's FIP case, effective 4/18/11 as a result of the triage held April 7, 2011, shall be deleted from the Department's records.
6. The Department shall issue a supplement to the Claimant for FIP benefits she was otherwise entitled to receive in accordance with Department Bridges Policy.



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:

