

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201143337
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: August 11, 2011
Wayne County DHS (76)

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 August 11, 2011. The claimant appeared and testified. [REDACTED] FIM and [REDACTED] FIS, appeared on behalf of the Department. [REDACTED] of [REDACTED], from Work First, appeared as a witness on behalf of the Department.

ISSUE

Whether the Department properly closed the Claimant's FIP case and imposed a 3 month sanction for the Claimant's failure to attend 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 assigned to attend the Work First orientation on June 20, 2011 and attended the entire orientation.
2. The Claimant advised the Work First contractor that she was attending cosmetology school Tuesday through Saturday from 9:00am until 4:30pm and was within 200 hours of completing her certification, which would allow her to take the State board exams.
3. The Claimant was advised by the Work First program that her school was not on an approved list and that they would not approve her attending school as an approved

activity. The Claimant was told by the Work First program to contact her worker to discuss the matter further.

4. The Claimant called her worker and did not receive a call back, but then learned her worker was out of town on vacation. The Claimant then contacted the worker's supervisor and was advised to file a request for a hearing.
5. The Claimant did not attend Work First on June 21 and June 22, 2011, and the Work First program requested that she be placed in triage on June 23, 2011.
6. The Department issued a notice of non compliance dated June 29, 2011, scheduling a triage July 5, 2011. Exhibit 1.
7. A triage was held and was not attended by the Claimant (who did receive the Notice of non compliance).
8. The Department, at the triage, determined that there was no good cause and imposed a three month sanction for non compliance with work related activities. Exhibit 2.
9. The Claimant's school was on a list of schools given to her by another Work First program in Warren, who referred her to the Mycareereducation.org. which is part of the Michigan Education Consumer Report provided by the State of Michigan. Claimant Exhibit 1.
10. The Work First Contractor, Ross, advised that her school was not approved by Ross and that she would have to attend Work First, as attending her cosmetology school was not an approved activity.
11. The Department initiated closure of the Claimant's case on July 6, 2011 and imposed a three month sanction on the Claimant for non compliance effective 8/1/11.
12. The Claimant requested a hearing on July 11, 2011 protesting the closure of her FIP 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"), formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq.* and Michigan Administrative Code Rules 400.3101-

3131. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Manual (“BRM”).

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A All Work Eligible Individuals (“WEI”) are required to participate in the development of a Family Self-Sufficiency Plan (“FSSP”) unless good cause exists. BEM 228 As a condition of eligibility, all WEIs must engage in employment and/or self-sufficiency related activities. BEM 233A The WEI is considered non-compliant for failing or refusing to appear and participate with the Jobs, Education, and Training Program (“JET”) or other employment service provider. BEM 233A 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. BEM 233A Failure to comply without good cause results in FIP closure. BEM 233A The first and second occurrences of non-compliance results in a 3 month FIP closure. BEM 233A The third occurrence results in a 12 month sanction.

JET participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A In processing a FIP closure, the Department is required to send the client a notice of non-compliance, DHS-2444, which must include the date(s) of the non-compliance; the reason the client was determined to be non-compliant; and the penalty duration. BEM 233A In addition, a triage must be held within the negative action period. BEM 233A A good cause determination is made during the triage and prior to the negative action effective date. BEM 233A.

In this case the Claimant was found to be in non compliance without good cause because her cosmetology school was not an approved activity, as the school was not on the Work First contractor’s approved list. The claimant was attending school from 9:00 am to 4:30 pm daily, Tuesday through Saturday in order to complete the required hours for a certificate to allow her to become a licensed cosmetologist. The Claimant was two thirds through the course required hours having completed 400 hours. The Department did not produce any witness from the Work First program who provided the actual list or other document relied upon to deny the Claimant’s school as an approved activity.

After the hearing the record was left open to afford the Claimant an opportunity to provide information about the website she used to select the school she is attending. The Claimant provided the web site that she was directed to in order to find schools that she could attend to study cosmetology. The web site is sponsored by the State of Michigan as part of a career and information website. The Claimant was referred to this website by the Warren Michigan Works contractor. As no supporting information was provided to support the Work First contractor’s denial of the Claimant’s request that she

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be allowed to continue her education, the Department has not sustained its burden of proof to demonstrate that the Claimant was in non compliance without good cause.

In fact, the evidence presented demonstrated that the Claimant was attempting to comply with the work related activities, but due to circumstance and factors not within her control, that her school was not on the "approved" list, she was faced with the choice of quitting school or attending Work First. The reason individuals are sent to Work First is to prepare the individual to enter the work force and find work, which was precisely what the Claimant was doing. Under these circumstances, the Claimant has demonstrated good cause and the Department's determination to close her FIP case was in error.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Claimant has demonstrated good cause for her non attendance with the Work First program attendance requirements. She was attending school full time and the Department's sanction and closure of her FIP cash assistance case was in error, and must be REVERSED.

According it is ORDERED:

1. The Department is ordered to reopen the Claimant's FIP case retroactive to the date of closure.
2. The Department shall issue a supplement to the Claimant for any FIP benefits she was otherwise entitled to receive, in accordance with Department policy.
3. The Department shall remove the 3 month sanction for non compliance it imposed on the Claimant from the Claimant's case record and from the Bridges system.



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

Date Signed: August 17, 2011

Date Mailed: August 17, 2011

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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 receipt 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.

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