

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201144088
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: August 17, 2011
Wayne County DHS (19)

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 17, 2011. The claimant appeared and testified. [REDACTED], FIM, [REDACTED], Jet Case Manager and [REDACTED] Jet Coordinator.

ISSUE

Whether the department correctly closed the claimant's Cash Assistance (FIP) case and imposed a three-month sanction for noncompliance with work-related activities without good cause.

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 attended a triage on March 22, 2011, and was found to have no good cause for nonparticipation in the Work First program due to unsatisfactory attendance.
2. The Department closed the claimant's FIP cash assistance case on May 1, 2011 and imposed a three-month sanction for noncompliance with work-related activities.
3. The Claimant was late for Work First because she had to catch three buses in order to arrive at the appointed hour.

4. Shortly after the triage, the Claimant received notice that the Work First location was changed to a location closer to where she lived.
5. No one from the Work First program with firsthand actual knowledge of the claimant's attendance and tardiness was present, or testified at the hearing.
6. The triage was held due to the Claimant having difficulty reaching the Work First location on time by bus after she lost her car in February 2011. The Claimant had to take her child to day care in the opposite direction, and then wait for a Smart bus up to 45 minutes and then a third bus to the Work First location. The Claimant arrived 15 to 30 minutes late.
7. The Work First program manager also advised the Claimant he would check into finding a closer location for her to attend Work First. The triage was held to discuss the barriers the Claimant had in arriving on time.
8. The barriers regarding the transportation issues were not addressed at the triage.
9. The Claimant was attempting to comply with the Work First requirements. The Claimant's conduct was not intentional.
10. Two days after the triage, the Claimant was transferred to a location that was closer to her residence.
11. The Claimant requested a hearing June 10, 2011 protesting the closure of her 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"), 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.

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.

In this case, the Claimant was solely reliant on bus transportation and was required to take three busses to get to Work First. The Claimant also had to transport her son to child care in the opposite direction from the Work First program location, and then start her three bus trip to Work First. Ironically, two days after she was triaged, she was advised that she would be moved to a Work First location closer to her home. The Claimant was not afforded an opportunity to attend closer to her house, as she was already found in non compliance without good cause and her FIP case closed. The individuals at the Work First program and the DHS representative who attended the triage were not available to testify at the hearing, and thus no individual other than the Claimant offered first hand testimony of the facts.

Under these circumstances the Claimant was late due to the transportation issues, which were not within her control. In order to participate she had to take a minimum of 3 buses, one of which only ran every 50 minutes. Under these circumstances the Claimant's non compliance was due to good cause reasons, and further the Claimant was attempting to comply. This decision was also influenced by the fact that the Claimant was transferred to a location closer to her residence a mere two days after the triage, and that no individual with first hand knowledge from either the Department or

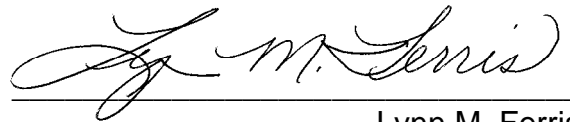
the Work First program testified. The Department did not meet its burden of proof to establish non compliance without good cause.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not meet its burden of proof to establish non compliance of the Claimant without good cause, and the Claimant had good cause. Therefore, the Department's negative action closing the Claimant's FIP case and reducing the Claimant's FAP benefits is REVERSED.

Accordingly it is ORDERED:

1. The Department shall initiate removal of the negative action it imposed closing the Claimant's FIP case and reducing the Claimant's FAP benefits effective 5/1/11.
2. The Department shall initiate reopening of the Claimant's FIP cash assistance case and issue a supplement to the Claimant retroactive to the date of closure for FIP benefits she was otherwise entitled to receive, in accordance with Department policy.
3. The Department shall initiate restoration of the Claimant to her FAP group retroactive to the date of her removal from the FAP group and issue a supplement to the Claimant for any FAP benefits she was otherwise entitled to receive, in accordance with Department policy.
4. The Department shall remove the 3 month sanction it imposed, as a result of the triage held 3/22/11, from the Claimant's case records and the Bridges system.



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

Date Signed: August 25, 2011

Date Mailed: August 25, 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

201144088/LMF

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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