

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

IN THE MATTER OF:

[REDACTED]

Reg.No. 201148774
Issue No. 1038
Case No. [REDACTED]
Hearing Date: September 22, 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 the Claimant's request for a hearing. After due notice, a telephone hearing was held on September 22, 2011. The Claimant appeared and testified. [REDACTED], JET Case Manager appeared on behalf of the Department. [REDACTED], JET Liaison, appeared on behalf of Work First program.

ISSUE

Whether the Department correctly sanctioned and closed the Claimant's cash assistance (FIP) for non compliance 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 was assigned to attend the Work First program.
2. The Claimant attended orientation class at the Work First program, and together with the rest of the class received a warning regarding disruptive behavior and the rules were reviewed with the class.
3. The Claimant denied that she was disruptive at the orientation class.
4. The following day during a test of Work First participants, the instructor requested that the Claimant leave the testing room after she was found to have been talking during the test. The Claimant left the test site after being asked to leave by the instructor.

5. During the testing the Work First instructor assigned to the test room left the room to speak to someone outside the room.
6. The Claimant attended the triage, which was held on 6/23/2011 and at the triage advised the Department that she was trying to address the situation for a woman in the test room who did not speak English and who was being helped by other test participants who were giving her test answers.
7. The Claimant denied being disruptive and stated she was trying to address the lady's situation and the fact that others were helping her and were cheating during the test. Exhibit 3.
8. The Claimant denied that she was swearing and using foul language in front of the Work First instructor during the test session.
9. The Department closed and sanctioned the Claimant's FIP case effective 9/1/2011 for a three month period.
10. The Work First instructor, who was the individual with first hand knowledge of the incident which led to the triage, did not appear at the hearing.
11. The Claimant requested a hearing on 8/2/2011 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"), 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") as a condition of eligibility 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

201148774 /LMF

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 Department held a triage on June 23, 2011 pursuant to the Notice of Noncompliance (which the Claimant did attend). At the triage, the Department determined that the Claimant was in noncompliance without good cause because the Claimant acted disruptively during a test on 6/7/11. Exhibit 4. The Department properly complied with Department policy regarding the requirements regarding triages and made a finding of no good cause for non compliance with the Work First requirements. BEM 233A.

The Claimant during the hearing denied using foul language and being disruptive. She indicated that she really was defending the woman who was taking the test who did not speak english, and was complaining about other program participants who were cheating and giving her answers. The Claimant did not deny that she was talking during the test. Exhibit 3. The Work First employee with first hand knowledge regarding the Claimant's behavior during the testing did not attend the hearing. It also appears that the Claimant was not warned individually regarding a disruption which occurred during orientation the day before the test incident, which resulted in the Claimant being triaged.

Based on these circumstances it seems somewhat premature to have triaged the Claimant for protesting about another participant cheating during the test. Had the Claimant been more prudent she should have waited until after the test to raise her concern and complaint. The incident leading to her triage occurred on the second day of the program and occurred due to cheating going on during a test. The instructor also should not have left the test room during the test and the cheating incident may have been avoided. While the Claimant should not have been talking during the testing regarding someone else's cheating, at the same time it appears that her concern and speaking out was not totally out of line.

While the Claimant understood that it was improper to talk during the exam, it also does not appear that the Department has met its burden of proof to show lack of good cause for failure to follow the rules applicable to the test situation; that is talking during the test

201148774 /LMF

and causing disruption. This decision was also influenced by the fact that cheating was occurring.

Thus it must be found that the Department improperly closed the Claimant's FIP cash assistance case and improperly imposed a 3 month sanction for noncompliance with work related activities.


Based of the above findings of fact and conclusions of law and for, the testimony of witnesses and the documentary evidence received, the Department has not met its burden of proof and incorrectly closed the Claimant's case for noncompliance without good cause of the test rules. BEM 233A.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Department incorrectly closed the Claimant's FIP case, and improperly imposed a three month sanction closing the Claimant's case for noncompliance with Work First program rules regarding disruptive behavior without good cause. Accordingly, the Department's determination is REVERSED.

Accordingly it is ORDERED:

1. The Department shall initiate reopening of the Claimant's FIP case retroactive to the date of closure.
2. The Department shall supplement the Claimant for any FIP benefits the Claimant was otherwise entitled to receive, in accordance with Department policy.
3. The Department shall return the Claimant to the Work First program.
4. The Department shall remove the 3 month sanction it imposed, arising out of the June 23, 2011 triage, from the Department's records and the Claimant's case file.



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

Date Signed: September 28, 2011

Date Mailed: September 28, 2011

201148774 /LMF

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

