

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-8743
Issue No.: 1038, 3029
Case No.: [REDACTED]
Hearing Date: January 3, 2011
Wayne County DHS (55)

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 January 3, 2011. The claimant appeared and testified. Deborah O'Rear, FIS Specialist and Ingrid Daniels, FIM 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 active FIP recipient and her case was closed due to non compliance with Work First attendance.
2. The Claimant was sent a notice of Non Compliance on October 21, 2010 scheduling the Claimant for a triage for no participation in scheduled activity. Exhibit 1
3. A triage was held on October 28, 2010, which was attended by the Claimant.
4. The Claimant was found in non compliance for failing to attend Work First and a finding of no good cause was made. Exhibit 2

5. This was the Claimant's second triage, the first triage was in 2009 and a form 754 was entered into at that time so the Claimant's benefits would not be sanctioned.
6. Pursuant to Notice of Case Action, the Claimant's FIP case was closed for three months and her FAP benefits were reduced, effective December 1, 2010. Exhibit 3
7. On September 21, 2010, the Claimant met with the Work First coordinator. Notes indicate that she advised that she had to attend court on September 22, 2010 and had an interview that week and also attended 12 hours of Work First.
8. No attendance records were submitted by the Department to substantiate attendance for the following week, starting September 27, 2010.
9. The Claimant had two job interviews with [REDACTED]. An interview was held on Friday, September 24, 2010.
10. The Claimant believed she had a job offer and advised the Work First program.
11. The Work First program sent the employer a verification of employment on October 5, 2010. Exhibit 4
12. The Claimant ultimately was not offered a position because she had not completed high school. The offer of employment was rescinded.
13. The Claimant advised Work First that she did not receive a job offer and was told to return October 8, 2010 by her Work First manager. Exhibit 4
14. The Claimant attempted, as requested by the Work First program, to return to Work First on October 8, 2010 and was told she could not attend and that she was scheduled for triage.
15. The Claimant's hearing request was not timely and the Department properly closed her FIP case and reduced her FAP benefits. The Department received the Claimant's hearing request on November 9, 2010, one day after it was due. Exhibit 5
16. The Claimant requested a hearing on November 4, 2010, which was date stamped received by the Department on November 9, 2010.

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.

If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

Before the Administrative Law Judge can review a proper good cause determination, there must first be a determination of whether the claimant was actually non-participatory with the hour requirements for the JET program.

Based on the record presented, the Claimant was found in non compliance for "No participation in required activity, 10/21/10" Exhibit 1; however, other documents and the testimony of the Claimant indicate that the Claimant did participate for 12 hours during the week and at least should have been credited with attending a job interview during the week and also advised Work First of a court appearance on September 22, 2010 to get her driver's license reinstated. A review of the record and the testimony of the witnesses require that the Department's finding of no good cause must be reversed for

the following reason. The Claimant did demonstrate good cause for her periods of non attendance, as for at least three of the attendance days the Claimant had job interviews, and a court date and advised the Work First program of these events. Once the Claimant was offered a job by [REDACTED], a fact which appears to be confirmed by the Work First notes as Work First program sent a verification of employment form to the prospective employer, she awaited notification of her start date and then learned that the offer was rescinded.

Upon learning that the job offer had not materialized, the claimant advised Work First promptly and was told to return to Work First October 8, 2010. The Claimant again complied and reported as directed and was told she was sent to triage. These various actions by the Claimant all along the way demonstrate that she was not avoiding attending the Work First Program but believed she had a job. Once she learned that she did not have a job she promptly told Work First and reported as directed. This does not demonstrate non compliance.

A review of the record indicates that the Work First program did not consider its own records and the activities of the Claimant during the week of September 21, 2010 and no proofs were submitted regarding attendance for the following week. The attendance records were incomplete as they also did not show the week following her job interview. This decision was also influenced by the fact that the Claimant's attendance for the week prior to September 21, 2010 was in compliance. This is not the record of the classic individual who attempts at all costs to avoid going to Work First.

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.

After a careful examination of the documentary evidence provided by the Department, 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 good cause reason for her non attendance periods because she reasonably believed she had a job, had attended two job interview and went to court.

It must be remembered that the goal of the Work First program is to help individuals find jobs. Job search becomes meaningless if you reasonably believe a job is in the offing. BEM 233A. The Department's finding of no good cause and the imposition of a three month sanction closing the Claimant's FIP Cash Assistance case and reducing her FAP benefits for three months is in error and must be reversed.


The issue of whether the claimant timely requested a hearing is not required to be further reviewed as her lack of timeliness and its effect is nullified by the order below

ordering the Department to reinstate the FIP case and FAP benefits retroactive to the date of closure and to supplement the claimant for same.

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' 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, December 1, 2010. and shall supplement the Claimant for any FIP benefits she was otherwise entitled to receive.
2. The Department 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 October 28, 2010.
3. The Department shall reassign the Claimant to the Work First program.
4. To the extent any of the reduction in FAP benefits was due to the sanction imposed upon the Claimant for non compliance and if it resulted in part from the Claimant's removal from his FAP group, the FAP benefits shall be supplemented retroactive to the date the decrease in FAP benefits was effective.


Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/20/11

Date Mailed: 01/21/11

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:

