

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 14024
Issue No: 1038, 3029
Case No: [REDACTED]
Hearing Date:
February 9, 2011
Wayne County DHS (18)

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 February 9, 2011. The Claimant appeared and testified. Ken Swiatkowski, FIM and Scott Moreno, FIS Case Manager appeared on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three (3) month sanction upon the claimant 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) Claimant was a FIP cash assistance and Food Assistance (FAP) recipient in Wayne County.

- (2) On January 1, 2010, the Department closed the claimant's FIP case and removed the claimant from his food assistance group decreasing his FAP benefits based upon a three-month sanction for noncompliance with work related activities and failure of the Claimant to demonstrate good cause. Exhibit 1 Notice of Case Action December 15, 2010.
- (3) The Claimant's FIP case closed due to the claimant's failure to attend a Work First orientation and appointment on November 15, 2010. Exhibit 1
- (4) The Claimant was assigned to attend the Work First Program orientation on two prior occasions and was turned away from the Work First Program on two occasions as the work first program said he lived out of their area. Exhibits 2 and 3
- (5) The Claimant was assigned to attend work first orientation on November 15, 2010, and was late due to illness. Exhibit 3
- (6) The claimant called his caseworker and requested another appointment within one day of being rejected because he was late due to illness and was advised he had three strikes and was out. The caseworker refused to reassign the Claimant to orientation.
- (7) The Claimant's then caseworker is no longer employed by the Department.
- (8) The claimant received the Notice of Non Compliance dated December 4, 2010 for failure to attend the work first program orientation on November 15, 2010, after the date the triage was to be held. Exhibit 4

- (9) The Triage was to have been held on December 10, 2010, and was not attended by the Claimant as he received the Notice of Non Compliance one day late after the triage appointment. Exhibit 4
- (10) The Claimant called his caseworker and was told his case was closed and that no further triage appointments could be made.
- (11) The Claimant demonstrated good cause for being late on November 15, 2010, due to illness. The Claimant testified credibly that he has serious heart related illness and diabetes and was ill on the date of the orientation.
- (12) The Department erred when it closed the claimant's FIP case and removed the Claimant from his FAP group resulting from the imposition of a three month sanction for non compliance for failure to attend the work first orientation. Exhibit 1
- (13) The Claimant requested a hearing on January 7, 2011, protesting the closure of the FIP cash assistance case and his removal from his FAP group. The hearing request was received on January 11, 2011.

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.

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 second occurrence of noncompliance on the FIP case, the Department can impose a 90 sanction for non compliance. BEM 233A.

After a careful examination of the documentary evidence provided by the Department and the testimony of the parties, the Administrative Law Judge rules that the Department has failed to meet their burden of proof to demonstrate that the Claimant should have had his FIP case closed and FAP benefits reduced for a three month period for non compliance. A review of the documents and the credible testimony of the Claimant clearly demonstrated that the Claimant should have been rescheduled to attend work first when he missed the November 15, 2010 appointment

due to illness. Illness is a condition not within the control of the Claimant and is good cause. Instead, the Claimant was told by his caseworker essentially no, and that “three strikes and you are out.”

The evidence clearly showed that the Claimant had attended 2 prior orientations and through no fault of the claimant was told he lived in the wrong area to attend the work first program in Wayne Michigan. Subsequently he was finally assigned to the correct work first location and due to illness was late and refused admittance to the orientation. Given the fact that he was ill on the date in question and called his caseworker the following day regarding the appointment problem claimant should have been reinstated as illness is out of one’s control and demonstrates a good cause reason for non-attendance or tardiness. Likewise, the claimant should have been rescheduled for a triage as he did not receive the notice of triage and should have been advised by his worker to provide a statement indicating that he was ill on the date in question and had attempted to attend the work first orientation although he was tardy. Instead he was told his case had closed.

Based on the foregoing it is found that the Department did not sustain its burden of proof and that the claimant demonstrated good cause for noncompliance with the work related activity. Accordingly, the Department’s determination by notice of case action on December 15, 2010, which closed the claimant’s FIP case and removed the claimant from his FAP group decreasing his FAP benefits, is REVERSED.

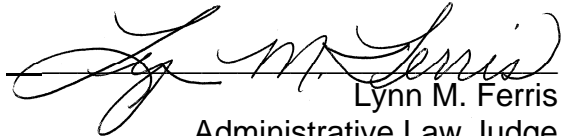
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was in non compliance with the Work First

program and the action closing his FIP case and removing him from his FAP case was in error and is REVERSED.

Accordingly, it is ORDERED:

1. The Department shall correct the its action closing the Claimant's FIP case and removing him from his FAP group for a three month period and shall reinstate the Claimant's FIP case retroactive to the date of closure and reinstate the Claimant to his FAP group.
2. The Department shall delete from its records the imposition of a three-month sanction upon the claimant and its finding of noncompliance for lack of good cause with the Work First program, as contained in the Notice of Noncompliance dated December 4, 2010, and Notice of Case Action dated December 15, 2010.
3. The Department shall issue a supplement to the claimant for FIP benefits he was otherwise entitled to receive retroactive to the date of his FIP case closure on January 1, 2011.
4. The Department shall reinstate the claimant to his FAP group and issue a supplement for FAP benefits that the claimant was otherwise entitled to receive retroactive to the date of its action of January 1, 2011 decreasing the claimant's FAP benefits.


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

Date Signed: 02/15/11

Date Mailed: 02/16/11

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:

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