

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-21265
Issue No.: 1038, 3029
Case No.: [REDACTED]
Hearing Date: [REDACTED]
Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 [REDACTED]. The claimant appeared and testified. [REDACTED] appeared as the Claimant's Authorized Representative. [REDACTED], FIM and [REDACTED] Case Manager appeared and testified on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and twelve month sanction closing the Claimant's FIP case and reducing the Claimant's FAP benefits 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 Department issued a Notice of Non Compliance dated [REDACTED] scheduling a triage on [REDACTED], which listed the date, time and place where to attend the triage. Exhibit 1. The Claimant was also advised by his caseworker by telephone where the triage was to be held. Exhibit 1
2. The Claimant received the Notice of Non Compliance.
3. A triage was held on [REDACTED] finding the Claimant had no good cause. The Good Cause Determination which was made stated in part: "[REDACTED] did

- not have good cause for not participating with JET by [REDACTED]". The date of non compliance was listed as [REDACTED] Exhibit 2
4. The Claimant went to the wrong location on the date of the triage reporting the DHS offices and waiting two hours, rather than the Work First location where the triage was held.
 5. On [REDACTED] the Department issued a Notice of Case Action, closing the Claimant's FIP case for a 12 month period and reducing the Claimant's FAP benefits due to failure to participate in Work First activities. Exhibit 3
 6. A notice of termination letter was sent to the Claimant by the Work First program on [REDACTED], terminating the Claimant from the Work First program as of [REDACTED]. The termination letter does not state the reason for termination and advised the Claimant that he was required to attend an exit interview on [REDACTED] before the close of business. Claimant Exhibits 1.
 7. The Claimant and his authorized representative requested copies of the relevant timesheets for the period of non compliance from the managers of the Work First Program and they were not provided. The Claimant was told by the program that he was not entitled to request documents.
 8. The sign-in sheet provided by the work first program to the Claimant's authorized hearing representative were for dates in [REDACTED] not the dates the Claimant was deemed to be in non compliance.
 9. The Department stipulated at the hearing and in its hearing summary that the triage non compliance was only the second non compliance for the Claimant, not the third, and that the Claimant's FIP should not have been closed for a year. The Department advised that it would fix this error in its system. Case closure, if applicable, would be for 90 days.
 10. The Claimant appeared at the Work First office on [REDACTED], to turn in his payroll record and was given a Verification of Employment form to have completed by his employer. The Claimant had his employer complete the Verification of Employment.
 11. The Claimant provided the Work First Program payroll records on December 3, 2010 to document that he was working that week.
 12. The Claimant did not return the verification of employment form as he received a notice of termination letter dated [REDACTED] after arriving home from work on [REDACTED], and was working that week. Claimant Exhibits 1 and 4.

13. The Claimant received the letter terminating him from the work first program after work on [REDACTED].
14. The hearing record was held open to allow the Claimant to submit payroll records for the period [REDACTED] through [REDACTED].
15. After the hearing, and by the due date for submission, the Claimant submitted five documents:
 - Payroll records, for the week ending [REDACTED], which demonstrated he was working that week except for [REDACTED], when he worked only half a day. Claimant Exhibit 2
 - A Doctor's excuse that he was attending physical therapy on [REDACTED] Claimant Exhibit 3
 - Payroll records for the week ending [REDACTED], which demonstrates the Claimant was working that week except for half days [REDACTED] and [REDACTED], [REDACTED] Claimant Exhibit 4
 - Doctor's excuses for [REDACTED] and [REDACTED] indicating the Claimant was attending physical therapy. Claimant Exhibit 5 and 6
16. No witness testified on behalf of the Work First Program.
17. The claimant was working during the period [REDACTED] [REDACTED] cleaning out buildings and had a weekly payroll sheet showing his work hours. The Claimant did not provide the verification of employment as he was working on December 6, 7 and 8, 2010 and could not return the verification.
18. The Claimant requested a hearing on [REDACTED], protesting the closure of his FIP benefits for 12 months as incorrect and the reduction in his FAP benefits due to non-compliance with work related activities. The Claimant also protested that he did not even know what the non-compliance was.

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 at the triage based upon the Good Cause Determination issued "not participating with JET by December 9, 2010. Just as the Good Cause Determination lacks specificity, the original Notice of Non Compliance did not state the reason and dates of non compliance with specificity. To add to the confusion, the Claimant was advised by the Work First Program on [REDACTED] that he was terminated as of [REDACTED].

Even though the Notice of Non Compliance affords the Claimant until [REDACTED] to show good cause, the Claimant reasonably could not have shown good cause as the dates of non compliance that he was found non compliant were not specified.

After the hearing was concluded the undersigned left the record open and allowed the Claimant to provide employment payroll records for the period [REDACTED] through [REDACTED]. The Claimant provided payroll records, for the week ending December 3, 2010 which demonstrated he was working that week except for December 2 when he worked one half day and provided a Doctor's excuse that he was attending physical therapy on [REDACTED]. Claimant's Exhibits 2 and 3.

The Claimant also submitted payroll records for the week ending [REDACTED] which demonstrate the Claimant was working that week except for half Days December [REDACTED] and [REDACTED] when he was at the Doctor for physical therapy. Claimant Exhibits 4, 5 and 6.

Based on these documents submitted after the hearing when the dates in question were known, the Claimant did demonstrate good cause for his periods of non attendance, as he was working and required medical attention documented by Doctor's notes.

A review of the record indicates that the Work First program did not provide adequate notice to the Claimant regarding the dates of non attendance supporting the non compliance, and therefore the Claimant could not reasonably be expected to demonstrate good cause. This decision was also influenced by the fact that the Claimant did present a verification of employment which he did not provide to the Work First program as he was terminated, and no due date appeared on the verification as to when it was to be returned.

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, the Claimant 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 sufficient to support its closure of the Claimant's FIP case and FAP benefit reduction. The Notice of Non Compliance did not advise the Claimant of the dates of non compliance and the Good Cause Determination was also unclear. Once he was aware of the information and dates of non compliance, the Claimant provided good cause reasons for his non attendance periods due to work and medical records which substantiated good cause and thus he is deemed to have demonstrated good cause.

A different result would thwart the goal of the Work First program which is to help individuals find jobs. Job search becomes meaningless if a participant is working. BEM 233A. The Department's finding of no good cause and the imposition of a twelve month sanction closing the Claimant's FIP Cash Assistance case and reducing his FAP benefits is in error and must be reversed.

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 twelve month closure of the Claimant's FIP case and reduction of the Claimant's FAP benefits are error and are REVERSED.

Accordingly, it is ORDERED:

1. The Department shall reopen the Claimant's FIP case retroactive to the date of closure, [REDACTED], and shall supplement the Claimant for any FIP benefits he was otherwise entitled to receive.
2. The Department shall delete the 12 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 [REDACTED].
3. The Department shall reassign the Claimant to the Work First program.
4. To the extent the reduction in FAP benefits was due to the sanction imposed upon the Claimant for non compliance with work related activities and resulted the Claimant's removal from his FAP group, the Department shall supplement the Claimant's FAP benefits retroactive to the date the decrease in FAP benefits, due to the Claimant's removal was effective. The Department may consider the income earned by the Claimant during [REDACTED] in computing the FAP supplement.

[REDACTED]
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 04/25/11

Date Mailed: 04/27/11

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:

[REDACTED]

Oakland County DHS (Dist #04) / DHS-1843

[REDACTED]

Administrative

Hearings