

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

IN THE MATTER OF:



Reg. No: 2011 27294
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
May 2, 2011
Wayne County DHS (57)

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. The Claimant appeared and testified on her own behalf at the hearing May 2, 2011. The Claimant did not appear at the continued hearing held on May 10, 2011 at 9:00 am. Taara Brazzell FIS, and Gwendolyn Bibb appeared on behalf of the Department. Patricia Hindman of the Michigan Works program also appeared and testified on behalf of the Department of Human Services

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three 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. The Claimant was a FIP, cash assistance recipient.

2. The Claimant did not attend a triage scheduled by the Department on February 18, 2011.
3. The Claimant received the Notice of Non Compliance scheduling the triage, which was sent to her last address on file with the Department.
4. The Department scheduled a triage because the Claimant had not met the Work First job search requirements of 20 hours per week during the time period July 18, 2010 through August 29, 2010. Exhibit 2 – 8
5. The Department conducted a triage and found the Claimant non compliant without good cause and imposed a 3 month sanction closing her FIP case.
6. The Claimant testified that she was attending the Work First program and did not know why her FIP case was closed.
7. The Department issued a Notice of Case Action on February 22, 2011, which closed her FIP case of 3 months, effective April 1, 2011.
8. The Claimant signed a Contract of Commitment dated July 6, 2010, agreeing to conduct 20 hours of job search activity weekly at the Work First Program. Exhibit 1
9. The Department received a change of address from the Claimant in March 2011.
10. The record was left open and the hearing was continued until May 10, 2011 at 9:00 am, at which time the hearing was concluded.
11. The Claimant did not meet her 20 hours of job search contract commitment for the following weeks beginning: July 18, 2010 (14 hours), July 25, 2010, (8 hours), August 1, 2010, August, 8, 2010 (6 hours), August 15, 2010 (9 hours), August 22, 2010 (1 hour). Exhibits 2 – 8.

12. The claimant requested a hearing on March 14, 2011, protesting the closure of her FIP case for three months.

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.

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. The evidence submitted by the Department indicated that the Claimant did not meet her 20 hours of job search in July and August 2010 and was appropriately triaged by the Department. The claimant did not submit at the hearing any proof to rebut that she was in attendance during the periods of weeks in question. Exhibits 2 through 8.

The Claimant also testified that she did not receive the notice of non compliance scheduling the triage. The notice of non compliance was sent to the last address provided to the Department by the Claimant. A letter properly address and mailed is presumed to be received by the addressee. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). The Claimant has not rebutted the presumption of receipt and thus as a matter of law the notice of non compliance is deemed to have been received by the Claimant.

The time sheets submitted by the Department establish that the Claimant was in non compliance and did not meet her 20 hours participation requirement and thus the Department's finding of no good cause is supported by the record presented.

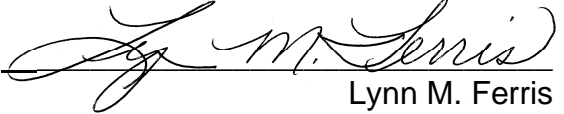
In Determining whether good cause has been demonstrated for non compliance with a JET requirement the standard to be applied is provided in BEM 233A page 3:

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 Administrative Law Judge has determined that the Department has met its burden of proof in and is correct in its finding that the claimant failed to participate with JET activities as required and did not demonstrate good cause why she did not comply with her assigned JET requirements. Therefore, the undersigned must rule that the Department's finding of no good cause and the imposition of a three month sanction, closing the Claimant's FIP case as required by BEM 233A, is affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the claimant was not in compliance with the JET program and that the Department's finding of no good cause, for failure to participate in the JET activities, is correct and the sanction and three month closure of the Claimant's FIP case is AFFIRMED.


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

Date Signed: 05/19/11

Date Mailed: 05/20/11

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:

