

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.: 2011-2741
Issue No.: 1038, 3029
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 22, 2010
Macomb County DHS (20)

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 November 22, 2010. The claimant appeared and testified. [REDACTED], Case Manager, and [REDACTED], Liaison WorkFirst 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. A Notice of Non Compliance was sent to the Claimant on September 1, 2010 for various actions including absence from WorkFirst August 3 and 18, 2010; no homework submitted on August 2, 1010 and August 5, 2010, and no job log submitted on August 27, 2010. Exhibit 1
2. A triage was scheduled on September 15, 2010 at 9:00 am. Not all of the dates of non compliance were listed in the Notice of Non Compliance, nor were the acts of non compliance for no job log and no homework noted. Exhibit 1
3. A triage was held and the department found that the Claimant did not demonstrate good cause.

4. The Claimant attended an interview and did not notify WorkFirst of the interview and did not report back to WorkFirst after the interview. Exhibit 2
5. The department issued a Notice of Case Action on September 15, 2010 which closed the Claimant's FIP Cash Assistance case for three months and decreased the Claimant's Food Assistance, FAP benefits, removing the Claimant from his group.
6. The Claimant testified that he did not have the homework job log for August 27, 2010 and doctor's note, because his grandma's car, which he used to get to and from WorkFirst, was stolen. Claimant's Exhibit 1
7. The Claimant did not get another Doctor's note. The Claimant saw [REDACTED] on August 3, 2010.
8. The Claimant believed that he was in non compliance because he did not submit his job log due to his vehicle being stolen and obtained a police report to bring to the hearing.
9. The Claimant did present his job log paperwork on the following Monday August 27, 2010 and advised the WorkFirst personnel that his car had been stolen. The Work First Representative would not accept the job log he submitted and said he would be triaged and probably reinstated.
10. The Claimant presented the Department with proof that the car was stolen at the triage and advised that his one missing job log was in the car.
11. The Claimant's car being stolen and the failure to file the job log was a condition not within his control.
12. The Department and WorkFirst determined that the Claimant should be charged 4 hours against the 16 hours he could use that month which put him over the limit of absence allowed. Exhibit 2
13. The claimant requested a hearing on September 15, 2010 protesting the closure of his FIP case. The hearing request was received by the department on October 15, 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 due to his exceeding the 16 hour absence limit per month for the month of August 2010. 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 his failure to file the job log as it was stolen with his car. This is a perfect example of a condition not within the control of the Claimant. The Claimant's testimony regarding the car theft is corroborated by the police report and thus should have been considered at the triage. The Claimant testified credibly that his job log homework and Doctor's note was in the car and attempted to provide the job log with explanation when it was due. The Department assessed 4 hours against the claimant's monthly absence hours for the failure of the claimant to turn in the one missing job log.

The Administrative Law Judge must observe that the Claimant did not follow the Work First rules to the letter; however the 4 hour assessment regarding the one job log which put the absences for the month beyond the 16 hours was in error as the claimant demonstrated a good cause reason for his non compliance. The claimant also credibly testified about his doctor's appointment with the date, and name of the physician who saw him.

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 documentation of good cause at the triage and at this hearing. 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 for three months 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 3 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 and shall delete the three month sanction and finding of no good cause with regard to the Claimant's non compliance with WorkFirst and remove any relevant disqualification from the Claimant's WorkFirst history resulting from the triage held on September 15, 2010.
2. The Department shall reassign the Claimant to the WorkFirst program.
3. 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 decrease in FAP benefits if appropriate.



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

Date Signed: 12/8/2010

Date Mailed: 12/8/2010

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.

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