

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.: 2011-2941  
Issue No.: 1038  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: November 22, 2010  
DHS County: Wayne (49)

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on November 22, 2010. Claimant appeared and testified. [REDACTED], and [REDACTED] appeared and testified on behalf of the Department of Human Services (DHS).

**ISSUE**

Whether DHS followed Family Independence Program (FIP) policy and procedures when it found Claimant did not comply with the Jobs, Education and Training (JET) program?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon competent, material, and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On August 16, 2010, Claimant entered the JET training program at [REDACTED].
2. On Friday, August 20, 2010, Claimant was tardy because the busses were running late.
3. Claimant called in to [REDACTED] and was told that the lateness was not a problem, and she should come in to work as scheduled.

4. On Friday, August 20, 2010, JET called Claimant at [REDACTED] and instructed her to report to JET on Monday, August 23, 2010, to discuss the tardiness of August 20, 2010.
5. On August 24, 2010, JET terminated Claimant from the program, stating the reason was "excessive tardiness."
6. On September 14, 2010, DHS issued a Notice of Noncompliance to Claimant indicating a noncompliance date of Monday, August 23, 2010.
7. The Notice of Noncompliance does not specify whether Claimant is alleged to have committed a first-time or a second-time noncompliance violation.
8. On October 5, 2010, DHS conducted a triage conference at which it was found that Claimant had not participated in required activity on Monday, August 23, 2010, and there was no good cause for her failure to do so.
9. On October 15, 2010, Claimant filed a notice of hearing request with DHS.

### **CONCLUSIONS OF LAW**

FIP was established pursuant to the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP program pursuant to MCL 400.10, *et seq.* and Michigan Administrative Code Rules 400.3101-400.3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables (RFT). These manuals are available online at [www.michigan.gov/dhs-manuals](http://www.michigan.gov/dhs-manuals).

The manuals are DHS' officially created policies and procedures. The DHS manuals are the legal authority which DHS must follow. It is to the manuals that I now look in order to see which policy applies in Claimant's case. After setting forth what the applicable policy is, I will examine whether it was, in fact, followed in this case.

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. The claimant is considered noncompliant for failing or refusing to appear and participate with JET. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities, and must be based on factors beyond the control of the claimant. Failure to comply without good cause results in FIP closure. The first and second occurrences of noncompliance result in a three-month FIP closure. The third occurrence results in a twelve-month sanction. BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP."

JET participants will not be terminated from a JET program without first scheduling a triage meeting jointly with the client to discuss noncompliance and good cause. In processing a FIP closure, DHS is required to send the client a notice of non-compliance, Form DHS-2444, which must include the date(s) of the noncompliance, the reason the client was determined to be noncompliant, and the penalty that will be imposed. In addition, a triage must be held within the negative action period. A good cause determination is made during the triage and prior to the negative action effective date. *Id.*

BEM 233A also provides that, if there is noncompliance for the first time, DHS must provide a First Noncompliance Letter, Form DHS-754, to the client and discuss it with her or him. At that time, the client must be offered an opportunity to comply with a Family Self-Sufficiency Plan. *Id.*

Having set forth the requirements of BEM 233A, I must now inquire whether BEM 233A was followed and adhered to in Claimant's case. In making my decision, I have reviewed all of the evidence and testimony in this case. I focus first in this case on DHS' Notice of Noncompliance, Form 2444, where I find that DHS erred in several respects. Second, I will examine whether the procedure for the First Noncompliance Letter, Form 754, was observed.

Looking first then at the Noncompliance Notice, Form 2444, I find that DHS failed to follow BEM 233A in three particulars. First, the date of noncompliance stated on Form 2444 is August 23, 2010, but there was no testimony at the hearing that established that a violation occurred on that date. Indeed, Claimant agrees she was late on Friday, August 20, because of transportation issues, but testified that she was not late on Monday, August 23. I find that the record before me does not establish that Claimant was noncompliant on Monday, August 23. As this is the date FOR which DHS charged her with noncompliance, I find the Notice is defective in this regard.

Second, the 2444 states that the reason for the allegation of noncompliance is, "No participation in required activity." I find nothing in the record in this case to establish that Claimant did not participate at all in the JET program and, specifically, nothing to support a statement that she did not participate AT ALL on Monday, August 23, the date assigned as the noncompliance date. I cannot see what it is that Claimant failed to do on Monday, August 23, 2010. I am aware that the JET caseworker's notes state that Claimant was tardy on August 23, but the caseworker did not testify at the hearing, while Claimant did testify, and her testimony was that she was not late on the 23<sup>rd</sup>. Therefore, I find that DHS' asserted reason of "no participation" is not proven by the record before me.

The third error in the 2444 Notice is that BEM 233A requires that the notice state the penalty that will be imposed. However, in this case the Notice states that this is “first or second” time penalty. Also DHS marked two penalty boxes with “x” marks: the box for the first-time and the box for the second-time penalties. I find and determine that DHS failed to give adequate notice to Claimant of what penalties she was facing pursuant to the noncompliance charge. I am aware that both first and second time offenses hold a three-month penalty, but DHS has established, in effect, a “three-strike” sequence, where the third offense results in a twelve-month termination of benefits. Also, a first-time offense poses a special right to a First Noncompliance Letter, and this too is part of the penalty structure.

I find and determine that DHS’ failure to state whether Claimant was in the first or second stage of the penalty sequence was a failure to fully disclose mandatory information about the consequences of her actions. I find that the penalty statement is required by BEM 233A and, in this case, DHS failed to provide it. These are the three errors DHS committed in its issuance of the Form 2444 Notice in this case.

I now turn to the other document in this case, which is the First Noncompliance Letter, DHS-754. I find and decide that this document was never issued in this case and DHS denied Claimant the opportunity to avoid first-time sanctions. I find and conclude that Claimant is entitled to such opportunity by BEM 233A. I find and conclude that, if no good cause was found, which is what occurred in this case, and this is a first-time noncompliance, then Claimant should have been afforded the opportunity to avoid sanctions by fulfilling compliance requirements within the time period before her FIP benefits were to be terminated.

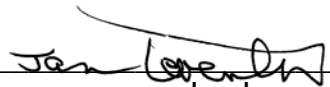
In conclusion, I find that DHS failed to fulfill its obligations under BEM 233A to provide specific notice of the date of noncompliance, the particular act of noncompliance, and the complete nature of the penalty that could be imposed, in particular, whether it is deemed a first, second or third-time violation. I also find and determine that DHS failed to issue a First Noncompliance Letter in this case. Due to these errors on the part of DHS, this action is REVERSED.

DHS is ORDERED to reissue a Noncompliance Notice with accurate and complete information, schedule and conduct another triage conference, and, if no good cause is found for Claimant’s noncompliance, DHS shall issue a First Noncompliance Letter. I note here that lack of reasonably priced transportation is good cause for noncompliance in BEM 233A and is listed as a type of good cause on the Noncompliance Notice as well.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, determines and concludes that DHS committed errors in this matter and shall be REVERSED.

IT IS ORDERED that DHS shall issue a new Noncompliance Notice with accurate and complete information, reschedule and conduct another triage conference at which the question of reasonably priced transportation is considered, and, if no good cause for noncompliance is found, DHS shall issue a First Noncompliance Letter.

  
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Jan Leventer  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: November 23, 2010

Date Mailed: November 23, 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.

JL/pf

cc:

