

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011 30153
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
May 25, 2011
[REDACTED]

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. A telephone hearing was held on May 25, 2011. The Claimant appeared and testified on her own behalf. [REDACTED]

[REDACTED] FIM and [REDACTED] FIS appeared on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the Claimant for non-compliance 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's FIP cash assistance case was closed due to non-compliance with work-related activities effective June 1, 2011.
2. The Claimant was assigned to attend Work First and was triaged for non-compliance by Notice of Non-Compliance dated March 14, 2011.

3. A triage was held on March 24, 2011 which the Claimant attended.
4. As a result of the triage a Form 754 was prepared which required the Claimant complete a 5 day compliance test to complete 30 hours of participation. Exhibit 1.
5. The Form 754 was prepared to avoid sanction and closure of her case.
6. The Claimant did not sign the Form 754. The Claimant testified that she was not told about the compliance testing.
7. The case notes indicate Claimant completed the compliance testing and was to return to Work First.
8. The case notes conflict as to whether the Claimant was non-compliant with no good cause and did not meet the compliance testing, Exhibit 2 (view case notes 4/7/11).
9. The case notes also indicate that the Claimant had good cause with regard to the first triage held 3/24/11. They state in part: "... this is the first triage and she was found to have good cause. The client is returning back to the JET program on Monday March 28, 2011 @ 9am and she was informed to be dressed in business attire." Exhibit 2 (view case notes 3/24/11).
10. No witness with actual first-hand knowledge from the Department or the Work First program was present to testify at the hearing.
11. A second Notice of Non-Compliance dated April 25, 2011 was sent to the Claimant and scheduled a second triage for May 4, 2011.
12. The Claimant requested a hearing on April 18, 2011 prior to the second Notice of Non-Compliance.
13. This hearing can only consider the first non-compliance and Form 754 arising out of the first Notice of Non-Compliance dated March 14, 2011 and triage conducted March 24, 2011.
14. The Claimant requested a hearing April 18, 2011 protesting that she was told she was not allowed to attend the Work First program.

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 “non-compliance”. BEM 233A defines non-compliance 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 non-compliance is FIP closure. However, for the

first occurrence of non-compliance on the FIP case, the client can be excused. 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.

In this case the Department did not establish sufficient facts to support what occurred as a result of the first triage held on March 24, 2011. While a triage was held, the case notes prepared by various writers conflict with regard to whether the Claimant established good cause, or whether no good cause was found and the Claimant was granted a Form 754 opportunity to avoid sanctions for non-compliance. No witness for the Department or the Work First program with actual knowledge testified and thus the only evidence that could be relied upon by the Department was the case notes prepared by various individuals who were not present at the hearing. The case notes themselves conflict and are unclear as to the result of the triage. The Claimant's testimony that she was unaware of the compliance testing, although not persuasive, is supported by the Department's evidence that the Form 754 form was not signed by the Claimant.

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 was not supported by any attendance records and no direct testimony was offered by anyone with actual knowledge as to the Claimant's non-compliance. Under these circumstances it must be found that the Department did not

sustain its burden of proof and therefore the triage must be conducted again and a determination of non-compliance or good cause for non-compliance determined again.

After a careful examination of the documentary evidence provided by the Department, the Administrative Law Judge has determined that the Department has not met its burden of proof and its finding that the Claimant failed to participate with JET activities as required and the results of the triage are unclear and therefore the Department is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department did not sustain its burden of proof with regard to the outcome of the triage held on March 24, 2011 and therefore the Department is REVERSED.

Accordingly, it is ORDERED:

1. The Department shall reopen the Claimant's FIP case, if the FIP case is already closed, pending the outcome of the triage ordered by this Decision. The Department shall issue a supplement to the Claimant for any benefits she is otherwise entitled to receive pending the outcome of the triage order to be conducted herein.
2. The Department shall remove from its records the sanction imposed upon the Claimant for non-compliance with work related activities arising out of the March 24, 2011 triage.

3. The Department is required to conduct a new triage and shall send a new Notice of Non-Compliance to the Claimant and shall advise the Claimant specifically what dates it found the Claimant to be in non compliance.
4. At the triage the Department shall determine whether or not the Claimant had good cause for any non-compliance or whether the Claimant failed to establish good cause.
5. The Department shall determine if no good cause is established by the Claimant. If good cause is not established the Claimant shall be entitled to a Form 754 to avoid sanction and closure of her FIP case as the triage which is ordered herein is a redo of her first triage which was found deficient, and thus the Claimant shall be entitled to a form 754 to avoid sanction and closure of her case.



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

Date Signed: June 13, 2011

Date Mailed: June 14, 2011

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/cl

cc:

