

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011 30267
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: May 19, 2011
District: Wayne County DHS (18)

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 May 19, 2011. The claimant appeared and testified. Janet Miller, Jet Coordinator, Ken Swiatkowski, FIM and Angela Clark, Medical Contact Worker 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 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 Claimant and his spouse (wife) are ongoing recipients of FIP cash assistance benefits and Food Assistance (FAP) benefits.
2. The Claimant and his spouse were assigned to attend the Work First Program orientation on several occasions.
3. The Claimant's spouse, [REDACTED] did attend the Work First program, until she was triaged and deferred, to determine if she should be medically deferred from attending Work First. Exhibit 6 and 7.

4. The claimant's spouse, [REDACTED] was sent a medical appointment notice for a psychiatric examination when the Medical Review Team (MRT) requested the exam as part of its review of a request for deferral for [REDACTED]. Exhibit 5
5. The Medical Appointment Notice was correctly addressed to the Claimant and the salutation of the letter was addressed to [REDACTED]. Exhibit 5
6. [REDACTED] did not attend the exam and no further medical information could be sent to the MRT and the Claimant's case was closed. Exhibits
7. The Department's Correspondence history confirms that the appointment notice was sent on November 23, 2010. Exhibit 14
8. The Department witness confirmed with the doctor's office that [REDACTED] did not attend the appointment.
9. [REDACTED] did not attend the hearing. Her husband testified that she did not receive the doctor's appointment notice, although it was properly addressed and sent to the Claimant's address. Exhibit 5
10. The Claimant was assigned to attend the Work First Orientation after the Medical Review Team found that the Claimant was able to work with restrictions on March 11, 2010. Exhibit 11
11. The Claimant was sent a notice to attend the orientation on November 29, 2010 and February 14, 2011, and did not report for orientation. Exhibits 10 and 11.
12. The Claimant testified that he did not receive either notice to attend orientation. The notices were sent to the correct address.
13. The Department's files for the Claimant did not contain any returned mail.
14. The Department sent two Notices of Non Compliance (duage) to the Claimant and his wife to attend a meeting at the DHS offices on February 24, 2011.
15. The Claimant and his wife received the Notice of Non Compliance but neither the Claimant nor his wife attended the triage held February 24, 2011. The Department closed the Claimant's case, as he did not establish a reason for his failure to attend the Work First program orientations.
16. The Department closed the Claimant [REDACTED] case when his wife missed the medical appointment scheduled for her and thus was not deferred from Work First as the deferral could not be processed. Without a deferral, [REDACTED] could not demonstrate good cause why she did not participate in the Work First program requirements.

17. The Department also closed the Claimant's case because it did not receive any medical forms to support a medical deferral as a reason for the Claimant's non attendance at Work First.
18. The Department presented a letter, it received from the Claimant's doctor dated [REDACTED] (medical needs form), which indicated that he was not able to work. Exhibit 15.
19. The hearing record was left open until the close of business on May 23, 2011, for the Claimant to submit, via facsimile, the letter which he submitted to the Department which was completed by his doctor.
20. The Claimant submitted, via fax to the Administrative Law Judge, a medical examination report completed by his doctor dated [REDACTED], Form DHS 49, which was filled out by his doctor on [REDACTED], which was not in the Department's files. In addition, the claimant submitted a Medical Needs Jet form, which was contained in the Department's files also dated [REDACTED]. The form indicates that the Claimant is unable to work. Claimant Exhibit 1.
21. The Claimant submitted both the DHS 49 and the Medical Needs Jet form to the Department and, because the forms were not in the Claimant's case file, the forms were not sent to the Medical Review Team by the Department.
22. The Claimant requested a hearing on April 20, 2011, protesting the closure of his FIP case and reduction in his FAP benefits as he claimed to have submitted proof to his caseworker that he could not work.

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. BEM 233A, page 6. However, for the first occurrence of noncompliance on the FIP case, the client can be excused. BEM 233A.

In this case, both the Claimant and his spouse [REDACTED] were found to be in non compliance for failure to comply with the Work First program requirements. The Claimant and his wife received the notice of noncompliance, advising them that a triage would be held on February 24, 2011, neither the Claimant nor his wife attended the triage. The Claimant's wife was found non compliant due to her failure to attend a medical appointment arranged by the Department at the request of the Medical Review Team considering whether the [REDACTED] should be deferred. She was also found to be in non compliance without good cause, because she was no longer considered deferred when she did not attend the doctor's appointment.

The Claimant was triaged and found to be non compliant because he had not attended either orientations that he was sent notices to attend. The Claimant had also sought a deferral from Work First and had been given forms to be returned to the Department to be completed by his doctor. The Department did not defer the Claimant because it said it never received the requested completed medical forms from the Claimant.

The Claimant testified credibly that he dropped the forms off at the Department drop box and produced copies of two forms he submitted to corroborate his testimony that he provided the forms to the Department. The forms provided by the Claimant are completed and dated [REDACTED] and signed by the Claimant's physician. Claimant's Exhibit 1. The department had only one of the forms in its file and did not have the second form the Claimant provided. Based on the Claimant's testimony it is determined that the Claimant did drop off both forms and the department should have processed the deferral and sent the forms to the MRT for review and decision. Had this been done, at least as regards the Claimant's situation, he would not have been assigned to attend orientation at the Jet Program while his deferral was being reviewed. Based upon this analysis and findings, the Department's decision finding the Claimant non compliant is incorrect in light of the finding that the Claimant provided the forms to the department. Notwithstanding this finding, the Claimant's case was still properly sanctioned and closed due to his wife's non compliance which is explained hereafter.

The Department's decision regarding [REDACTED] non compliance without good cause is correct and is upheld. The Department's closure of the Claimant's case is correct as the Department correctly determined that the Claimant's wife, [REDACTED] missed the medical appointment made for her, and thus was no longer deferred as no

disability determination could be made and the Claimant's failure to participate in Work First requirements were found to be without good cause. BEM 233A, BEM 260, page 4.

██████████ advised the department at an earlier triage that she did attend that due to health and mental health problems she could not attend the Work First program. The Claimant's spouse was deferred after a triage. The Claimant's spouse was interviewed and her medical records were sent to the Medical Review Team (MRT). The MRT requested that further medical information be provided to it and the Department sent the Claimant an appointment notice arranging for the Claimant's spouse to be examined. The claimant testified that his wife did not receive the appointment notice. The appointment notice was mailed to the correct address and was mailed to the Claimant but the letter itself addressed the Claimant's spouse ██████████ in the salutation. Exhibit. 5. The Claimant's wife did not attend the hearing and thus did not testify regarding whether she received the appointment notice. The Department also confirmed with the Doctor's office that ██████████ did not attend the appointment.

The law creates a presumption that a letter that is properly addressed and mailed is presumed to be received. The proper mailing and addressing of a letter creates a presumption of receipt. 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). In this case the Claimant testified that he did not receive the Notice of Medical appointment and several other letters including the two letters scheduling the orientations which he did not attend. The only letter the Claimant acknowledged that he received was the notices of non compliance for the triage sent to both him and his wife that he did not attend. Based on this testimony it is determined that the presumption that the letter was received has not been rebutted and that the letter was received and not responded to by ██████████ as it was properly addressed and mailed.

Based upon this conclusion it is found that the Department properly found the Claimant's spouse ██████████ in non compliance without good cause for failure to meet the participation requirements of the Work First program. As she no longer was able to be considered deferred from participation, her failure to attend Work First was not excused due to disability as no such determination could be made because the Claimant did not attend the appointment. BEM 233A and BEM 260.

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 ads and recipients.

In this case, the good cause which was under consideration and documentation that would have supported the deferral of ██████████ was based on the provision involving mental health issues resulting in inability to participate:

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A page 4.

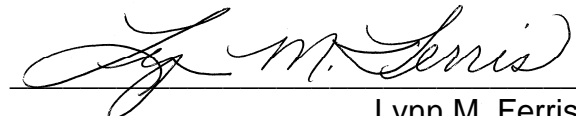
The substantiation of [REDACTED] medical claims for deferral was never completed and thus the [REDACTED] was properly found in non compliance without good cause.

After a careful examination of the documentary evidence provided by the Department, and the Claimant, and the testimony of the witnesses the Administrative Law Judge has determined that the Department's finding of no good cause and the imposition of a three month sanction closing the Claimant's FIP Cash Assistance case as a result of [REDACTED] non compliance was correct and is AFFIRMED.

After the sanction period is concluded the Claimant may reapply before the third month of sanction and may also seek a deferral from attending Work First at that time but will be required to substantiate his medical reasons for deferral with an appropriate doctors' statement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department's determination of no good cause and its action imposing a three month closure of the Claimant' FIP case and reduction of the Claimant's FAP benefits, is correct and in accordance with Department policy and is AFFIRMED.



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

Date Signed: 05/31/11

Date Mailed: 06/02/11

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:

