

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.: 2011-316
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 18, 2010
Wayne County DHS (76)

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 18, 2010. The claimant appeared and testified. [REDACTED], FIM, [REDACTED], FIS, [REDACTED] Jet Case Manager, appeared on behalf of the Department. [REDACTED] Michigan Works 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 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 is a FIP recipient and began attending WorkFirst in November 2009.
2. The Claimant was determined to be in noncompliance without good cause at a triage held on September 14, 2010. Exhibit 1 and Exhibit 2
3. At the triage, it was determined that the claimant was in noncompliance with the program attendance requirements and that her FIP case was required to be closed for a three-month period.

4. During the triage, the claimant advised the department that the reason she had not been attending WorkFirst was because she was caring for her mother in August 2010, attending school full-time in August and September and working part-time.
5. The claimant left one voicemail in July for her WorkFirst case worker advising that she was caring for her mother who had just had a hip replacement and requested assistance in terms of what she needed to do for the WorkFirst requirements.
6. On June 28, 2010, the claimant had a first triage and a finding of no good cause was made, however the claimant was given a one-time pass with regard to sanctions and signed a DHS 754.
7. At the triage on June 28, 2010, the claimant was advised that she could attend school full-time in lieu of job search participation but was required to provide weekly attendance reports demonstrating her attendance at school. Exhibit 3
8. The claimant did not submit weekly attendance records demonstrating her attendance at school at the triage on September 14, 2010. The claimant did provide a document indicating that she was employed part-time providing home health care for a client.
9. Claimant understood that she was required to provide weekly attendance reports demonstrating her attendance at school but did not do so for much of the time she was attending school.
10. The Claimant provided a letter dated September 3, 2010 that she was enrolled in the Fall Semester beginning August 23, 2010 for 13 hours which is a full time schedule. Claimant Exhibit 2.
11. The claimant worked a part time schedule in the evenings as a personal care worker for 2 hours on each date: 8/14, 8/21, 8/28, 9/3 and 9/10. Claimant Exhibit 1.
12. The department properly determined that claimant did not demonstrate good cause at the September 14, 2010 triage and the department properly applied a three-month sanction closing her FIP case.
13. The department issued a Notice of Case Action on September 17, 2010 which closed the claimant's FIP case for a three-month period. Exhibit 4

14. The claimant requested a hearing on September 21, 2010 protesting the closure of her FIP case. The hearing request was received by the department on October 4, 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 not attending the WorkFirst program and did not provide the WorkFirst Program daily attendance sheets of her school attendance when she began school, August 23, 2010. Additionally while the Claimant was working, the Claimant's work hours were in the evening and were 2 hours per week. These hours are not sufficient to defer the Claimant from attending Work First. There was no evidence submitted by the Claimant to indicate she was in compliance in July and August while she attended school and cared for her mother for part of the time. After the first triage held June 28, 2010, the Claimant was required to provide the WorkFirst Program proof weekly that she was attending classes. While the Claimant may have met the requirement for some of the time she did not provide the program with proof of her attendance at school fall term until the September 14, 2010 triage and stopped providing attendance records that she was attending class. The care of her mother was never approved by the WorkFirst Program and the one call made by the Claimant was not sufficient to resolve the issue as to whether her failure to attend WorkFirst for this reason would be excused.

The Administrative Law Judge must observe that the Claimant had been given an opportunity to demonstrate with documentation that she was attending school after the care of her mother but her testimony was that she did not do so. The testimony offered by the Claimant alone also did not support a basis for a finding of good cause. As previously requested by the Department at the triage the Claimant needed to demonstrate good cause and was required to do so my testimony backed by documentation of dates and times when she was in school documented by her professors as clearly required by the program. 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:

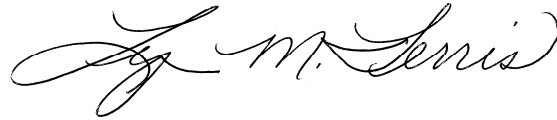
Good cause is a valid reason for noncompliance with employment and/ or self-sufficiency-related activities that are based on factors that are beyond the control of the noncompliant person. A claim of good cause must be verified and documented for member adds and recipients.

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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 met its burden of proof and that the Claimant failed to provide 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 correct and must be affirmed.

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 not correct and is AFFIRMED.



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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