

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.: 2011-4547
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 6, 2010
DHS County: Oakland (02)

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 December 6, 2010. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified on behalf of the Department of Human Services (DHS). [REDACTED] DHS, was also present at the hearing.

ISSUE

Whether DHS followed policy and procedure in terminating Claimant from the Family Independence Program (FIP)?

FINDINGS OF FACT

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

1. On or about January 1, 2010, DHS awarded FIP benefits to Claimant.
2. On January 1, 2010, DHS assigned Claimant to develop a Family Self-Sufficiency Plan, and referred Claimant to [REDACTED], a Michigan Works! Agency, to participate in job search, job readiness and community service programs.
3. Claimant did not request reasonable accommodation for a physical or psychological disability.

4. On or before [REDACTED], Claimant was required to meet with [REDACTED] to be evaluated for emotional and mental disability in order to participate in the Michigan Works! educational component.
5. On or before [REDACTED], Claimant was required to go to [REDACTED] for psychological counseling services in order to participate in the Michigan Works! educational component.
6. On [REDACTED], DHS issued a Notice of Noncompliance to Claimant, stating her date of alleged noncompliance was March 22, 2010, and her act of noncompliance was "No participation in required activity."
7. There is nothing in the record to substantiate that DHS or another agency scheduled an activity on March 22, 2010, for Claimant to attend, and there is nothing in the record to substantiate that Claimant failed to attend a scheduled activity on that date.
8. The Notice of Noncompliance scheduled a triage conference for April 8, 2010, to determine if good cause existed for Claimant's action.
9. On April 8, 2010, Claimant was ill and called DHS to tell them she could not appear for the triage conference.
10. DHS failed to offer Claimant a telephone triage conference option at that time.
11. DHS referred her to an employee of the Michigan Works! Agency, [REDACTED].
12. A triage conference was never held.
13. On or about April 20, 2010, DHS terminated Claimant's FIP benefits.
14. On May 19 and May 25, 2010, Claimant filed Requests for a Hearing with DHS.

CONCLUSIONS OF LAW

FIP was established by 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.

The manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by Congress or the Michigan Legislature, they constitute the legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case.

The policies that DHS refers to in its Hearing Summaries, thereby informing the Judge of its authority for the action taken, are BEM 230A, "Employment and/or Self-Sufficiency Related Activities: FIP/RAP [Refugee Assistance Program] Cash," and BEM 230B, "Failure to Meet Employment Requirements: FAP [Food Assistance Program]." I determine that the second of these two policies, BEM 230B, is a FAP-related policy and I decline to apply it in this case, which concerns solely FIP benefits. With regard to BEM 230A, this policy item describes administrative procedures for the employment and employment-related activity customers must engage in, and includes a procedure for requesting deferral of the requirement.

I agree with DHS that BEM 230A should be applied in this case. I have read BEM 230A, which is twenty-eight pages long. I find no requirement that customers participate in psychological evaluation and counseling in order to participate in educational courses. I find nothing in BEM 233A that permits DHS or its agents to initiate inquiries into a customer's psychological well-being unless the customer herself requests reasonable accommodation for a disability. I find and conclude that DHS erred in imposing such requirements on Claimant in this case, and Claimant should be given another opportunity to participate in JET without extraneous requirements.

I determine and conclude that BEM 230A was not observed in that on the record before me, it appears that although Claimant never requested accommodation for a disability, Claimant was required to be evaluated for emotional and mental disability by [REDACTED] and to go for counseling at [REDACTED]. I find and conclude that this requirement has no basis in DHS policy and procedure, and constitutes error. I determine that DHS shall be REVERSED.

I next turn to BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP," which the Department failed to cite. I find and determine this section to be relevant to the case before me, and I find that DHS erred in several respects in failing to follow BEM 233A's requirements.

BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP," requires clients to participate in employment and self-sufficiency-related activities and to accept employment if it is offered. BEM 233A. All Work-Eligible Individuals (WEIs) are required to participate in the development of a Family Self-Sufficiency Plan (FSSP) unless good cause exists. BEM 228.

As a further requirement of eligibility, WEIs must engage in employment and/or self-sufficiency-related activities. A WEI is considered noncompliant for failing or refusing to appear and participate with JET or any other employment service provider. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that is based on factors that are beyond the control of the noncompliant person. BEM 233A.

Failure to comply without good cause results in FIP closure. The first and second occurrences of non-compliance result in a three-month FIP closure. The third occurrence results in a twelve-month sanction. *Id.*

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

I now will consider whether the BEM 233A policies and procedures were followed in this case. I find and determine BEM 233A was not observed by DHS at several points. I have examined all of the evidence and the testimony in this case in its entirety. I find and determine that although DHS alleges in the Notice of Noncompliance that Claimant failed to participate in required activity on March 22, 2010, there is nothing in the record to prove that DHS or another agency, such as the [REDACTED], ever scheduled Claimant for a required activity on March 22, 2010. In addition, there is nothing in the record to document Claimant's failure to appear on March 22, 2010, for a required activity. In this case, I find that there is no clear and convincing evidence that such an activity ever occurred. I find that DHS erred in scheduling a triage conference in a situation where no customer error was identified.

Based on all of the evidence and testimony in this case, I find there is clear and convincing evidence to persuade me that the unclear description of Claimant's noncompliance in the noncompliance notice was in fact a pretext for terminating Claimant from the JET program because she refused to cooperate with psychological evaluation and counseling.

In this case, Claimant requested assistance in attending the [REDACTED]. An undated Memo in the record, from [REDACTED], states as follows:

She claims she will be graduating [REDACTED]. We will enroll client in this component only if she will be emotionally and mentally evaluated through [REDACTED] to see if she can do school and be gainfully employed (with or without assistance). We would also like her to go through [REDACTED] [REDACTED] for counseling. Somehow we must help client break this cycle so she will become self-sufficient. If this is okay with DHS, then we will send something in writing to [REDACTED] which she will have to sign stating that she will follow through. If she does not follow through with [REDACTED] and [REDACTED], then client's case should be closed and sanctioned and we will term her "noncompliant". Department Exhibit 2, p. 16.

The Memo uses the phrase "break the cycle" in paragraph one, "break this cycle" in paragraph two, and "break the welfare cycle" in paragraph four.

This Memo taken in its entirety causes me to conclude and decide that DHS failed to observe the policies and procedures for noncompliance set forth in BEM 233A. Indeed, the fact that DHS did not cite this Item in its Hearing Summaries bolsters my conclusion that they did not use it in the ordinary course of business in this case. I determine and conclude that DHS failed to present a date of noncompliance and an act of noncompliance and thereby acted arbitrarily in terminating Claimant from FIP.

Second, I decide and find that DHS failed to offer Claimant a telephone triage conference when she could not attend the April 8, 2010, triage in person. DHS Specialists are required to offer a telephone triage option to customers who cannot attend the triage in person. BEM 233A, p. 7. I find this did not occur in this case and, therefore, I find DHS committed error by not doing so.

Third, I determine and conclude from the record before me that DHS erred in that it terminated Claimant's benefits without conducting a triage in this case. There is no file memo or other documentation of a triage in the record. Also, I cannot tell whether, if a triage was held, DHS was present as required by policy.

TRIAGE

Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation.

...

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking. BEM 233A, p. 7.


Accordingly, I find and determine it is necessary to REVERSE DHS in this case. DHS is hereby REVERSED. IT IS ORDERED that DHS shall restore all FIP benefits to

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Claimant to which she is entitled, place Claimant in a JET program, and determine if a triage is necessary at this time, identifying the date of noncompliance and the specific action taken or not taken by the customer. DHS shall proceed in accordance with BEM 233A in particular, and with all DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that DHS shall be REVERSED. IT IS ORDERED that DHS shall reopen Claimant's case, restore and continue FIP benefits and participation in the JET program, and determine whether there is a need for a triage at this time, in accordance with all DHS policies and procedures.



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

Date Signed: December 8, 2010

Date Mailed: December 9, 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.

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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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