

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.: 2011-4629
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] appeared and testified on Claimant's behalf. [REDACTED] appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant was noncompliant with the JET program on September 13, 2010?

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 July 16, 2010, DHS awarded Family Independence Program (FIP) and Food Assistance Program (FAP) benefits to Claimant.
2. On July 16, 2010, DHS assigned Claimant to the 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. On September 23, 2010, DHS issued a Notice of Noncompliance to Claimant, stating his act of noncompliance was that he missed an appointment/meeting on September 13, 2010.

4. There is nothing in the record to substantiate that DHS or another agency scheduled an appointment or meeting with Claimant for September 13, 2010, and there is nothing in the record to substantiate that Claimant failed to attend an appointment or meeting on that date.
5. The Notice of Noncompliance scheduled a triage conference for October 6, 2010, to determine if good cause existed to excuse Claimant's action.
6. In early October, Claimant experienced migraine headaches and was unable to attend the October 6 conference.
7. Claimant left a message with the DHS specialist that he was unable to attend the conference.
8. On October 18, 2010 Claimant filed a Request 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 (MACR) 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.

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations in Title 7 of the Code of Federal Regulations. DHS administers the FAP program pursuant to MCL 400.10 *et seq.*, and MACR 400.3001-400.3015. DHS' policies are found in BAM, BEM and RFT. *Id.*

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. After setting forth what the applicable policy item is, I will examine whether it was in fact followed in this case.

BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP," is the manual item I determine to be relevant and applicable to this case. DHS 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 condition 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, the 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 noncompliant; and the penalty duration. 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.*

In addition to BEM 233A, I find that BEM 233B, "Failure to Meet Employment Requirements: FAP," is also relevant to this case, and I include it here in my discussion and cite it as the basis for my decision along with BEM 233A. BEM 233B presents the same noncompliance procedure for FAP as is set forth in BEM 233A for FIP.

I find and determine BEM 233A was not observed by DHS at several points in this case. 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 attend a meeting or appointment on September 13, 2010, there is nothing in the record to prove that DHS or another agency, such as the [REDACTED], ever scheduled Claimant for an appointment or a meeting on September 13, 2010. In addition, there is nothing in the record to document Claimant's failure to appear on September 13, 2010, for an appointment or meeting. In this case, I find that there is no clear and convincing evidence that such events occurred at all. I find that DHS erred in scheduling a triage conference in a situation where no customer error was identified.

Second, I find that DHS failed to offer Claimant a telephone triage when he called in to say he could not attend. 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 conclude that DHS erred in not doing so.

Third, I determine and conclude from the record before me that DHS erred in that a triage was not conducted at all in this case. There is a case note that states, "Client failed to attend triage and was closed noncompliant." I determine and conclude that the case note states only that the customer did not appear. I find that the case note does not document whether a triage was held in Claimant's absence as required by BEM 233A. Also, I cannot tell from the case note whether DHS was present at the triage 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 any and all benefits to which Claimant is entitled and reschedule Claimant's triage conference, identifying the date of noncompliance and the action taken or not taken by the customer on that date. DHS shall consider, as possible good cause deferments, Claimant's health issues and any unplanned events or factors such as Claimant's responsibilities to his mother and other family members. DHS shall proceed in accordance with BEM 233A, 233B, and 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 in this matter. IT IS ORDERED that DHS shall reopen Claimant's case, restore and continue FIP and FAP benefits as appropriate, reschedule Claimant's triage conference, and conduct the triage 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

2011-4629/JL

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.

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:

