

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201146834
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: September 7, 2011
Wayne County DHS (36)

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 September 7, 2011. The Claimant appeared and testified. [REDACTED], ES appeared on behalf of the Department.

ISSUE

Whether the Department correctly sanctioned and closed the Claimant's cash assistance (FIP) for non compliance with work related activities without good cause.

FINDINGS OF FACT

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

1. The Claimant was assigned to attend the Work First program.
2. The Claimant was granted a deferral from attending April 15, 2011 through April 25, 2011 to care for her mother (who had just had a heart attack). The Claimant was to return to Work First on April 25, 2011.
3. The Claimant did return on April 25, 2011.
4. The Department sent a Notice of Non Compliance to the Claimant addressed to her address of record on file with the Department on June 21, 2011. The Notice scheduled a triage for July 5, 2011.
5. The Claimant did not attend the triage.

6. The Department held a triage and found that there was no good cause for the Claimant's failure to provide job logs, and that her attendance for May 2011 exceeded the monthly absence limit of 16 hours.
7. The Department sanctioned and closed the Claimant's FIP case for 12 months effective 7/27/11.
8. The Claimant attended a family funeral of her aunt sometime at the beginning of July, 2011. Claimant Exhibit 1.
9. The Claimant requested a hearing on July 22, 2011 protesting the closure of her FIP cash assistance.

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"), formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq* and Michigan Administrative Code Rules 400.3101-3131. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A All Work Eligible Individuals ("WEI") as a condition of eligibility must engage in employment and/or self-sufficiency related activities. BEM 233A The WEI is considered non-compliant for failing or refusing to appear and participate with the Jobs, Education, and Training Program ("JET") or other employment service provider. BEM 233A 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. BEM 233A Failure to comply without good cause results in FIP closure. BEM 233A The first and second occurrences of non-compliance results in a 3 month FIP closure. BEM 233A The third occurrence results in a 12 month sanction.

JET participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A In processing a FIP closure, the Department 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. BEM 233A In addition, a triage must be held within the negative action

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period. BEM 233A A good cause determination is made during the triage and prior to the negative action effective date. BEM 233A.

In this case, the Claimant claimed to have not received the Notice of Non Compliance. The Notice was sent to the Claimant's at her home address, which was the last address of record available to the Department. The Claimant further testified that she did not have trouble receiving her mail.

There is a presumption in law that a letter properly addressed and sent is presumed to be received. In this case because the Claimant did not advise the Department of any issues regarding trouble with receiving her mail, and in fact testified at the hearing that she had no trouble receiving mail, the Claimant has not rebutted the presumption in law of receipt. Therefore it is presumed that the letter, the Notice of Non Compliance, which scheduled the triage was received by the Claimant as a matter of law. The Department properly addressed and sent the notice of triage to the Claimant at the last known address it had for the Claimant. Based on the presumption in law that a letter properly addressed and mailed is presumed to be received, it is found that the Claimant did receive the June 21 2011 Notice of Non Compliance as a matter of law. The Claimant's testimony did not serve to rebut the presumption that she did not receive the Notice of Non Compliance.

The Department held a triage on July 7, 2011 pursuant to the Notice of Non Compliance, which the Claimant did not attend. At the triage, the Department determined that the Claimant was in non compliance without good cause because the Claimant exceeded her hours of absence for the month of May 2011 and specifically found that no good cause for non compliance was established. Exhibit 3. The Department properly complied with Department policy regarding the requirements regarding triages and the finding of no good cause for non compliance with the Work First attendance requirements. BEM 233A.

The Claimant had been excused from attending the Work First program due to her mother's heart attack for a 10 day period April 15, through April 25, 2011. The business records MIS case notes, which were admitted as business records, indicate that the Claimant returned to the program on April 25, 2011 and on 5/23/11. The MIS case notes very specifically state that the Claimant appeared at the program on 5/23/11 and was given an extension to turn in her job log for 5/9/11 through 5/13/11 by 5/24/11, and because she advised that she had become employed she was given a verification of employment. The notes further indicate that on May 26, 2011 the Claimant never turned in her job logs for 5/9/11 through 5/13/11 . Based on these circumstances the Work First program found the Claimant had exceed the 16 hours limit for absences during the month of May 2011 and requested a triage. Exhibits 2 and 3.

At the hearing the Claimant did not present any job logs, including the missing job logs she was to have turned in. The Claimant also said she could not attend the triage due to a family funeral. The Claimant also stated that she was not required to submit job logs.

The Claimant denied that she was employed and given a verification, and stated she was not required to submit job logs as she considered herself still deferred. The case notes indicate otherwise. The Claimant's testimony in this regard was not credible as her testimony was inconsistent and in general appeared lacking in truthfulness. The Claimant provided no documentary proof that she was deferred after April 25, 2011, and although she testified that she kept all her job logs she did not present any at the hearing. The Claimant offered no good cause reason why she could not attend the Work First program. This finding was also influenced by the fact that Claimant did not inform her case worker of any of these issues prior to the hearing.

The Claimant did not present facts or circumstances at the hearing which would support a finding of good cause (which would excuse her from attending the Work First program). Thus, it must be found that the Department correctly closed the Claimant's FIP cash assistance case and properly imposed a 12 month sanction for noncompliance with work related activities.

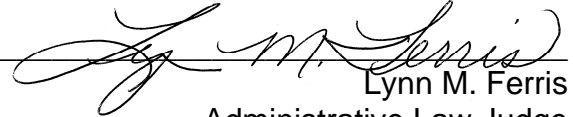
The Claimant also stated that she could not attend the triage due to a family funeral. The Claimant submitted a funeral notice and program, which she testified was held in early July. The funeral program does not disclose the date the funeral was held. The Claimant did not recall the specific date of the funeral but testified it was in early July. The funeral is not good cause for the Claimant's non compliance due to attendance issues during May 2011 which were reviewed at the triage. As the actual date the funeral occurred was not specifically confirmed by the Claimant, it is found that the Claimant did not establish by the evidence presented that she could not attend the triage. Claimant Exhibit 1.

At the hearing it was also established by the evidence presented that this was the third sanction for non compliance without good cause, and that the Department properly imposed a 12 month sanction. The Claimant had been in the Work First program on and off since 2008 and was well versed and understood the requirements and effects of non compliance.

Based of the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record at the hearing, the testimony of witnesses and the documentary evidence received, the Department has demonstrated that it correctly followed and applied Department policy in closing and sanctioning the Claimant's FIP case for non compliance without good cause. BEM 233A.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Department correctly closed the Claimant's cash assistance FIP case and correctly imposed a twelve month sanction closing the Claimant's case for noncompliance without good cause with work related activities due to non-attendance at the Work First program. Accordingly, the Department's determination is AFFIRMED.


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

Date Signed: September 14, 2011

Date Mailed: September 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 receipt 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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