

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201215064
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: December 7, 2011
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 December 7, 2011. The claimant appeared and testified. Theodore Smith a witness also appeared for the Claimant. [REDACTED]wski, FIM and [REDACTED], FIS appeared on behalf of the Department of Human Services.

ISSUE

Whether the Department properly sanctioned and closed the Claimant's cash assistance (FIP) case and removed her food assistance 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. The Claimant did not attend the orientation because she did not receive the Appointment Notice.
2. The Claimant was sent a Notice of Non Compliance dated September 8, 2011 for a triage to be held on September 15, 2011.
3. The Claimant received the Notice of Non Compliance late on September 16 2011 from her neighbor who had received the Claimant's mail. The Claimant could not reach the Department, as its offices were closed.
4. The Claimant spoke with her worker the next business day and was told her case was closed.

5. The Department sent a Notice of Case Action to the Claimant dated September 16, 2011 closing her FIP case and decreasing her FAP benefits effective October 1, 2011.
6. The Claimant requested a hearing on October 25, 2011 protesting the closure of her FIP case and reduction of her food assistance benefits.

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").

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

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") are required to participate in the development of a Family Self-Sufficiency Plan ("FSSP") unless good cause exists. BEM 228 As a condition of eligibility, all WEIs 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 did not receive the Notice of Noncompliance until the day after the triage and credibly testified that her neighbor had received the notice and brought it to her after the triage date had passed. The Claimant contacted her worker as soon as possible, the next business day, and was told her case was closed. The Department was advised of the situation and did not offer another triage date. Additionally, the Claimant credibly testified that she never received the Notice of Appointment to attend orientation.

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). While the Department correctly addressed and mailed the notices to the Claimant that are at issue here, the Claimant did demonstrate by her testimony that at least one of the Notices, the Notice of Non Compliance was improperly delivered. This testimony is sufficient to find that the Claimant did not receive the Notice of Orientation as she demonstrated problems with her mail delivery.

Because the Claimant did not receive notice of the triage she did not have an opportunity to demonstrate good cause why she did not attend orientation. The Claimant's failure to receive the Notice of Appointment to attend Work First orientation is good cause for her failure to attend, as it is a situation out of her control. If the Claimant had received the notice she could have attended.

Good cause is demonstrated when factors outside of the control of the non compliant person causes them to be absent. The Claimant has demonstrated good cause and thus the Department's decision closing the Claimant's FIP case and reducing her FAP benefits was in error, as the Claimant has demonstrated a good cause reason for her non attendance at the Work First program. BEM 233A, pages 3 and 4.

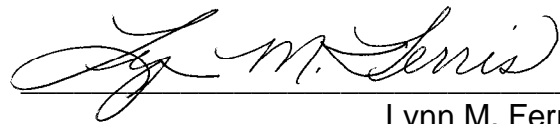
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law find that the Department improperly closed and sanctioned the Claimant's FIP case and reduced the Claimant FAP benefits for 3 months, as the Claimant demonstrated good cause for her failure to attend the Work First program orientation and therefore its determination is REVERSED.

Accordingly it is ORDERED:

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1. The Department shall initiate reopening and reinstate the Claimant's FIP case retroactive to the date of closure, October 1, 2011, due to non compliance with Work First.
2. The Department shall issue a supplement to the Claimant for FIP benefits she was otherwise entitled to receive in accordance with Department policy.
3. The Department shall initiate recalculation of the Claimant's FAP benefits and shall include the Claimant as a FAP group member retroactive to the date of closure, October 1, 2011, due to non compliance with Work First.
4. The Department shall issue a supplement to the Claimant for FAP benefits she was otherwise entitled to receive in accordance with Department policy.
5. The Department shall delete and remove from the Claimant's case record and the Bridges system the sanction it imposed arising out of the triage of September 15, 2011.



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

Date Signed: 12/13/11

Date Mailed: 12/13/11

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:

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- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/hw

cc:

