

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-19416
Issue No: 1012
Case No: [REDACTED]
Hearing Date:
January 17, 2012
Cass County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on January 17, 2012.

ISSUE

Did the Department of Human Service (the department) properly propose to cancel claimant's Family Independence Agency (FIP) benefits based upon its determination that claimant (or significant other) did not participate in mandatory Work First 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) Claimant was receiving Family Independence Program (FIP) benefits for herself, M.B. and three minor children [REDACTED] is the father of two of claimant's children and lives in the home.
- (2) On September 8, 2011 claimant received a sanction for FIP non-compliance, which lasted from October 1-October 31, 2011.
- (3) Claimant's significant other, [REDACTED], alleges that he is mentally challenged and cannot read and write.
- (4) On October 25, 2011, claimant and [REDACTED] was warned by the caseworker for incomplete paperwork.

- (5) On November 25, 2011, claimant and M.B. was triaged for [REDACTED] failure to satisfy required job search activity and found to have no good cause for failure to complete job logs.
- (6) On December 8, 2011, the department caseworker sent claimant notice that the FIP was being sanctioned for failure to comply with JET activities and that the family's FIP benefits would be sanctioned effective January 1, 2012.
- (7) On December 13, 2011, claimant filed a request for a hearing to contest the department's negative action.

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) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Department of Human Services requires clients to participate in employment and self sufficiency related activities and to accept employment when offered. The focus is to assist clients in removing barriers so they can participate in those activities which lead to self sufficiency. However, there are consequences for a client who refuses to participate without good cause. **Non-compliance may be an indicator of possible disabilities and the department is to considered further exploration of any barriers.** BEM, Item 233A. As a compliance of eligibility clients must work or engage in employment and/or self sufficiency related activities. Non-compliance of applicants, recipients and member adds, means doing any of the following without good cause:

- Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification and clients can reply at any time.
- Failing to or refusing to appear or participate with the Jobs Education and Training program, or other employment service providers
- Complete a family automated screening tool (FAST) as assigned in the first step in the FSSP process.
- Develop a family self sufficiency plan
- Comply with activities assigned in the FSSP.

- Provide legitimate documentation of work participation
- Appear for a scheduled appointment or meeting related to assigned activities
- Failure to participate in employment or a self sufficiency related activities
- Accept a job referral
- Complete a job application
- Appear for a job interview
- Stating orally or in writing to a definite intent not to comply with the program requirements
- Threatening, physically abusing, or otherwise behaving destructively to anyone conducting or participating in an employment and/or self sufficiency related activity
- Refusing employment support services as a refusal prevents participation in employment and/or self sufficiency related activities (BEM, Item 233A, p.2)

In the instant case, the facts are not at issue. The department caseworker concedes on the record that claimant has alleged as his disability that he cannot read and write. Claimant has been determined to be able to work by the Medical Review Team with restrictions. Claimant was assigned Job Search which requires him to fill out paperwork and fill out job applications. The department did not establish how a person who cannot read or write is supposed to be able to comply with Job Search or filling out paperwork to prove that he conducted Job Search. In addition, claimant testified that he talked to the Michigan Rehabilitation Services representative, who filled out the orientation paperwork for him but never let him know when he was supposed to attend Michigan Rehabilitation Services. The department representatives stated on the record that they did not make a referral to Michigan Rehabilitation Services on claimant's behalf. They did not have any information on whether or not claimant had attended Michigan Rehabilitation Services.

Good cause is a valid reason for non-compliance with employment and/or self sufficiency related activities that are based on factors that are beyond the control of the non-compliant person. A claimant with good cause must be verified for member adds and recipients. Good cause includes the following:

- The person is working at least 40 hours a week on average and earning at least state minimum wage.

- if the claimant is physically or mentally unfit for the job or activity, or
- if the claimant has a debilitating illness or injury, or
- an immediate families illness or injury requiring in-home care by the claimant, or
- **the department or employer has failed to make reasonable accommodations for the claimant's disability, while the claimant has no child care.**
- If the claimant requested transportation services from DHS, the Michigan Works or other employment services provider prior to case closure and reasonably priced transportation was not available to the claimant.
- The employment involves illegal activities, or
- The claimant experiences discrimination.
- There is some unplanned event or factor such as:
 - domestic violence
 - health or safety risks
 - homelessness
 - jail hospitalization or
 - religion
- or the claimant quits to assume the employment comparable on salary and hours
- there is a total commuting time which exceeds 2 or 3 hours per day, including time to and from child care facilities. (BEM, Item 233A, pp. 4-5)

The penalty for non-compliance without good cause is FIP closure effective April 1, 2007, the following minimum penalties apply:

- For the first occurrence on the FIP case, close FIP for not less than 3 calendar months, unless the claimant is excused from non-compliance.

- For the second occurrence on the FIP case, close the FIP for not less than 3 calendar months
- For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.

The penalty counter also begins April 1, 2007, regardless of the previous number of non-compliance penalties. Begin a sanction period with the first pay period of the month. Penalties are automatically calculated by the entry of non-compliance without good cause in BRIDGES. This applies to active FIP cases including those with a member add who is a WEI JET participant. BEM, Item 233A, p. 6. JET Participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss non-compliance and good cause. A triage meeting is to be locally coordinated to notify the MWA case manager of triage meetings including scheduling guidelines. Claimant's can either attend the meeting or participate in a conference call, if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. Claimant's must comply with triage requirements within the negative action period. BEM, Item 233A, p. 7. The department is to determine good cause based on the best available information during the triage and prior to the negative action date. Good cause may be verified by information already in the file with DHS or MWA. Good cause must be considered even if the claimant does not attend with particular attention to possible disabilities, including disabilities that have not been diagnosed or identified by the claimant an unmet needs or accommodation. BEM, Item 233A, p. 7. The department is to follow the following procedure for processing the FIP closure:

- Send a DHS-2444 notice of employment and/or self sufficiency related non-compliance within 3 days after learning of the non-compliance.
- Included in the DHS-2444 is the date of non-compliance, the reason the client was determined to be non-compliant, the penalty that would be imposed, and schedule a triage to be held within the negative action period. BEM, Item 233A, pp. 7-8.

The department must make reasonable accommodation and assist clients with disabilities. The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability. BEM, Item 233A, pages 3-4

In the instant case, the client is physically able to work according to his medical needs forms. However, he has never, on the record, claimed that he cannot work. He is claiming that he cannot read nor write, so he is not able to fill out job applications, nor fill out paperwork for Job Search, if he cannot read and write. He has complied with JET in other aspects by going to community service activities

as directed. A formal referral to Michigan Rehabilitation Services would be an appropriate accommodation as the department caseworker testified that the Michigan Rehabilitation counselors will help with all paperwork and work with individuals with limitations to assist them in finding appropriate employment.

If the client establishes good cause within the negative action period, reinstate benefits; see *Good Cause for Noncompliance* in this item. Send the client back to the work participation program, if applicable, after resolving transportation, CDC, or **other factors** which may have contributed to the good cause. Make any changes/corrections in Bridges to reflect the outcome of the noncompliance. BEM, Item 233A, page 10.

This Administrative Law Judge finds that claimant has established good cause for his failure to complete his Job Search Logs.

This Administrative Law Judge finds that the department has not established by the necessary competent, material and substantial evidence on the record that claimant was non-compliant with Work First activities. Claimant had one prior non-compliance episodes which mean that this is the second non-compliance episode. The department's decision must be REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Family Independence program benefits under the circumstances. This Administrative Law Judge finds that claimant did provide good cause for the failure.

Accordingly, the department's decision is REVERSED. The Department is ORDERED to reinstate claimant's FIP benenefits and lift the sanction. The department is ORDERED to provide a formal referral to Michigan Rehabilitation Services so that claimant can be accomodated and provided with assistance in finding appropriate employment and assisted in filling out appropriate paperwork for his continued eligibility.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/19/12

Date Mailed: 1/19/12

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.

LYL/ds

■ [REDACTED]