

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

IN THE MATTER OF:



Reg.No. 2012 45042
Issue No. 1038
Case No. [REDACTED]
Hearing Date: May 7, 2012
Wayne County DHS (17)

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 May 7, 2012. The Claimant appeared and testified. [REDACTED] JET Case Manager, [REDACTED], Triage Specialist appeared on behalf of the Department. [REDACTED], JET Case Manager, Michigan Works appeared as a witness 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 and was required to participate for 20 hours per week. After a triage was held on January 19, 2012, the Claimant was found to have good cause and was reengaged with Work First.
2. The Claimant was required to attend Work First 11 hours a week and was given credit for home care services she provided to her mother 2 days a week for a total of 9 hours.
3. A second triage was held on March 15, 2012, which was attended by the Claimant.

4. At the second triage the Department determined that the Claimant had no good cause for the Claimant's failure to attend Work First for the weeks beginning February 20 and February 27, 2012.
5. The Department found the Claimant exceeded the monthly absence limit of 16 for February 2012.
6. At the second triage, the Department also found the Claimant in non compliance for failure to attend a job fair interview on two occasions and deemed this to be refusal of a bona fide offer of employment.
7. The Claimant was assigned by Work First to appear for a job interview on March 2, 2012 and March 5, 2012 with an employer who had a job that the Claimant was selected to interview for, as she was qualified. The employer had two jobs available.
8. The Claimant did not attend either interview.
9. The Department sent a notice to the Claimant on March 15, 2012, which imposed a sanction closing the Claimant's FIP case for 3 months effective March 30, 2012, due to non compliance without good cause to participate in Work First activities as required.
10. The Claimant requested a hearing on April 2, 2012 protesting the closure of her FIP cash assistance and imposition of a 3 month closure sanction.

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

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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 occurrence 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 period. BEM 233A A good cause determination is made during the triage and prior to the negative action effective date. BEM 233A. However, a failure to participate can be overcome if the client has good cause. Good cause is a valid reason for failing to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the claimant. BEM 233A. The penalty for noncompliance is FIP closure. However, a failure to participate can be overcome if the client has good cause. The penalty for noncompliance is FIP closure.

In this case, the Claimant was deemed in non compliance with Work First requirements for two reasons, failing to attend the required hours per month, and failure to attend a job interview arranged by Work First for employment with an employer with two job openings.

At the hearing, the Department relied on BEM 223A and referenced the section in support of its action asserting the Claimant had refused suitable employment. The Department's position that the Claimant refused a bona fide job offer is incorrect. The Section cited requires that an actual job offer be made to the Claimant such that she can accept or refuse it. The Claimant never refused a bona fide job offer. No job offer was ever made by the potential employer because the Claimant did not attend either interview that the Work First program had scheduled for her. However, this error does not require that Claimant be relieved of her responsibility to participate when a job interview is scheduled for her.

BEM 233A also provides:

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

Failing or refusing to:

Appear and participate with the work participation program or other employment service provider.

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Provide legitimate documentation of work participation.

Appear for a scheduled appointment or meeting related to assigned activities.

Participate in employment and/or self-sufficiency-related activities.

Participate in required activity.

Accept a job referral.

Complete a job application.

Appear for a job interview .BEM 233A, p. 2. (emphasis supplied).

In this case the uncontroverted testimony of both parties indicates that the Claimant was given two opportunities to attend a job interview for an available job, which she had been specifically selected for as one of two applicants for two job openings. The Claimant did not attend either interview. The interview was for a job for 40 hours employment per week and paid \$9.00 an hour. The Claimant did not attend either interview claiming it interfered with home care services provided to her mother for a total of 9 hours per week (part time work). The Claimant did not reschedule her home care schedule to attend the interviews, which was a circumstance within her control, as on one of the dates in question her responsibilities required her to shop for her mother and pick up prescriptions. It is noted that both these activities could have been rescheduled to attend a job interview for full time employment.

In this case, the listed good cause reasons were reviewed by the undersigned and it was determined based upon the evidence presented at the hearing and the testimony of the parties, that the Claimant did not demonstrate or meet any of the good cause reasons set forth below:

Good Cause includes the following:

Employed 40 Hours

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

Client Unfit

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

Illness or Injury

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

Reasonable Accommodation

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.

No Child Care

The client requested child care services from DHS, the work participation program, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

Appropriate. The care is appropriate to the child's age, disabilities and other conditions.

Reasonable distance. The total commuting time to and from work and the child care facility does not exceed three hours per day.

Suitable provider. The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/ licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

Affordable. The child care is provided at the rate of payment or reimbursement offered by DHS.

No Transportation

The client requested transportation services from DHS, the work participation program, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

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Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

Domestic violence.

Health or safety risk.

Religion.

Homelessness.

Jail.

Hospitalization.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

Long Commute

Total commuting time exceeds:

Two hours per day, not including time to and from child care facilities **or**

Three hours per day, including time to and from child care facilities.

The Family Independence Program (FIP) and Refugee Assistance Program Cash (RAPC) are temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP and RAPC engage in employment and self-sufficiency related activities so they can become self-supporting. BEM230A.

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. Our focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause. BEM 233A.

The Department's evidence demonstrated that it had sufficient non participation with Work First requirements by the Claimant to determine both non compliance by the Claimant for failing to attend the job interviews, and lack of good cause for non participation in job interview activities. Evidence regarding the Claimant's additional alleged non compliance for failure to attend Work First for two weeks in February 2012 was not considered by the undersigned. Failure to attend a job interview for an available job defeats the very essence of the Work First program and the Family Independence Program's stated goals. Thus, it must be found that the Department correctly closed the Claimant's FIP cash assistance case and imposed a 3 month sanction for noncompliance with work related activities.

The Claimant can reapply for FIP benefits in June 2012.

Based of the above Findings of Fact and Conclusions of Law 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 and imposing a 3 month sanction. 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 3 month sanction closing the claimant's case for noncompliance with work related activities. Accordingly, the Department's determination is AFFIRMED.



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

Date Signed: May 15, 2012

Date Mailed: May 15, 2012

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,

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- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- 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

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cc:

