

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

IN THE MATTER OF:



Reg.No. 2012 56296
Issue No. 1038
Case No. [REDACTED]
Hearing Date: July 2, 2012
Wayne County DHS (76)

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 July 2, 2012. The claimant appeared and testified. [REDACTED] FIS and [REDACTED] Assistance Payment Supervisor appeared on behalf of the Department. [REDACTED] of [REDACTED] appeared as a witness for 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 an ongoing participant of the Work First program and was an ongoing recipient of FIP benefits.
2. The Claimant did not meet her weekly participation requirements for job search for the weeks of April 2, 2012 and May 28, 2012. The Claimant was absent on March 22, 2012 and did not turn in her job search log on March 21, 2012. Claimant was absent on March 1, 2012 and did not turn in her job search log on March 2, 2012.
3. The Department sent a Notice of Non Compliance to the Claimant on April 6, 2012. The Notice scheduled a triage for April 17, 2012.

4. The Claimant did attend the triage. At the triage the Claimant did advise the Department that she missed Work First due to an illness, but did not present a doctors note or excuse.
5. The Claimant produced a letter from her doctor dated [REDACTED] indicating that she was seen in the clinic on [REDACTED] and [REDACTED] and [REDACTED] for complaints of chest pain. The doctor indicated that "the chest pains were not related to her heart or lungs and are likely musculoskeletal chest wall pains. Patient has no work restrictions from a medical stand point at this time". Claimant Exhibit 1.
6. The Department held a triage and found that there was no good cause for the Claimant's failure to attend Work First and submit her job participation paperwork.
7. The Department sent a Notice of Case Action on April 17, 2012 closing the Claimant's FIP case for 6 months effective May 1, 2012.
8. The Claimant requested a hearing on May, 16, 2012 protesting the closure of her FIP cash assistance case.

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 result in a 3 and 6 month FIP closure respectively. BEM 233A The third occurrence results in a Lifetime 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.

BEM 233A provides direction to the Department as follows when determining good cause:

Clients must comply with triage requirement and provide good cause verification within the negative action period. Determine good cause based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or the work participation program. BEM 233A, page 8.

In this case, the Claimant was assigned to attend Work First. The records presented at the hearing indicate that her attendance was deficient and that the participation requirement was not met. The triage was held and resulted in a finding of no good cause and a second sanction being imposed by the Department. At the triage the Claimant was given a medical needs form to have completed, but Claimant never returned the form.

At the hearing, the Claimant introduced a letter from her doctor as the basis why she was unable to meet participation requirements. Claimant Exhibit 1. The Doctor's letter indicates that she saw the doctor on March 2, 2012 and April 2, 2012 for complaints of chest pains. On March 2, 2012 Claimant did not turn in her job search log for that week. The failure to turn the logs in might have been excused had the Claimant presented a doctor's excuse or attempted to submit the logs late, however the Claimant had no doctors excuse at the triage, did not request to submit the logs late due to illness and never submitted the job search log. Additionally, the doctor's letter does not reference any other dates that per se would have caused the Claimant to be in non compliance had she completed her job search hours. The doctor's letter further notes that the Claimant has no work restrictions and that the chest pains were due to musculoskeletal chest wall pains not pains due to heart or lungs. The letter is not sufficient to excuse the Claimant's lack of participation for the dates in question, and thus is deemed insufficient to establish good cause. It is the Claimant's responsibility to attend Work First and to provide the program proof of doctor's appointments so absences can be excused as

they occur. The time to present a doctor's excuse is shortly after an absence occurs and also at the triage or before the end of the negative action period, which in this case was April 30, 2012.

The case notes prepared by the Work First program contemporaneous to events occurring do not mention any reference to the Claimant advising the program that the Claimant was absent due to an illness and the Claimant did not provide other written evidence to the contrary at the triage.

The evidence presented demonstrated that the Department held a triage and that at the triage the Department determined that the Claimant had failed to meet her weekly participation requirements, failed to turn in several job search logs and thus was in non compliance and good cause was not established. The Department had no other evidence to consider regarding the reason(s) for the Claimant's absences which might demonstrate good cause because the Claimant did not present proof that she had health problems and doctors appointments. The Department correctly found no good cause and instituted closure of the Claimant's FIP case. Unfortunately, the Claimant's inaction with regard to attending Work First and not communicating with the program caused the sanction to be properly imposed.

It is noteworthy that should the Claimant reapply for FIP benefits after the expiration of the current 6 month sanction, and if Claimant should receive a further sanction for non compliance without good cause, a third sanction will result in Claimant's LIFETIME disqualification from receiving FIP Cash Assistance.


Based of the above Findings of Fact and Conclusions of Law and 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 6 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 6 month sanction closing the claimant's case for noncompliance with work related activities for non participation with the Work First program.

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Accordingly, the Department's determination is AFFIRMED.



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

Date Signed: July 10, 2012

Date Mailed: July 10, 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,
 - 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:

