

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

IN THE MATTER OF:

SHANYELLE SMITH
4383 BUCKINGHAM AVE
DETROIT, MI 48224

Reg.No. 2012 73297
Issue No. 1038, 3029
Case No. 102871077
Hearing Date: October 15, 2012
Wayne County DHS (57)

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 October 15, 2012. The Claimant appeared and testified. Mark Boyd, FIM appeared and testified on behalf of the Department.

ISSUE

Whether the Department properly sanctioned and closed the Claimant's cash assistance (FIP) case 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 attended the program.
2. The Claimant stopped attending the Work First program after she was physically assaulted by her boyfriend, and father of her son.
3. The Department issued a Notice of Non Compliance on 8/21/12, scheduling a triage for 8/28/12. (Exhibit 2)
4. At the triage the Claimant provided pictures via her cell phone to demonstrate that she had been pistol whipped by her boyfriend and was a victim of domestic violence.

5. The Department determined at the triage that the Claimant had not demonstrated good cause.
6. The Claimant was sanctioned and her FIP case closed effective 9/1/12, and her FAP benefits reduced for a 6 month period.
7. The Claimant moved out of her home on October 4, 2012, due to domestic violence.
8. The Department issued a Notice of Case Action which sanctioned and closed the Claimant's FIP cash assistance case for non compliance with work related activities for six months, and removed the Claimant from her FAP group and reduced her FAP benefits.
9. No Department personnel or Work First personnel who attended the triage attended the hearing.
10. No personnel from the Work First program attended the hearing, so no one testified with first hand knowledge regarding the triage.
11. The Claimant produced two pictures of herself with a swollen left eye (which resulted from an assault on August 7, 2012).
12. The Claimant requested a hearing on 8/28/12 protesting the imposition of a sanction and the closure of her FIP case, and reduction of her FAP 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").

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

Good cause is demonstrated when factors outside of the control of the non compliant person causes them to be absent domestic violence is such a reason. In this case the Claimant credibly testified that she provided the Work First program and her then case worker at the triage pictures of her face after she had been assaulted by her boyfriend and father of her child with a pistol. The Claimant also presented two actual pictures of herself after the assault. The Claimant further credibly testified that her boyfriend also said he would kill her if she sought a personal protective order. At the triage it was determined that the Claimant had not demonstrated good cause and that she needed to present additional evidence of domestic violence.

The Department's decision in this case is reversed. Domestic violence is per se good cause for non attendance at the Work First program as a classic unplanned event or factor, BEM 233A pp 5.

The Department should also have deferred the Claimant from attending Work First after it discovered the domestic violence when Claimant presented the pictures of physical abuse Department Policy provides:
Domestic violence means one or more threats or acts against any family member concerning any of the following:

- Physical injury.
- Sexual abuse.
- Sexual involvement of a dependent child.
- Mental/emotional abuse.
- Neglect or deprivation of medical care.

Defer parents and caretakers with a documented claim of threatened or actual domestic violence, against themselves or their dependent chil-

dren, that can reasonably be expected to interfere with work requirements.

Assist the client to develop a plan intended to overcome domestic violence as a barrier to self-sufficiency. The plan may include participation in services for domestic violence victims or receipt of related professional care. Specific activities which might reasonably be expected to endanger the client should be avoided. Document the clients' agreement in the FSSP. BEM 230A pp8.

A deferral would also be supported by the Claimant's current situation. The Claimant again credibly testified that on October 4, 2012 she and her children moved from her home after her son was burned with an iron by his father and Claimant's boyfriend. Claimant moved to a cousin's house with her children to be safe, but the Claimant's boyfriend kicked in the door of that house upon discovering her presence there.

In conclusion, the Department under these circumstances, having been presented with pictures demonstrating assault, had no basis for requesting that the Claimant provide further proof to demonstrate good cause. No Department representatives or Work First program representatives who attended the triage attended the hearing, thus no witness with first hand knowledge testified at the hearing.

In this case the Claimant provided through her credible testimony and through the actual pictures she presented that she had been assaulted by her boyfriend. Based upon the foregoing, the Claimant has demonstrated good cause and thus the Department's decision closing the Claimant's FIP case and reducing Claimant's 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.

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 for 3 months, as the Claimant demonstrated good cause for her failure to attend the Work First program due to illness, and therefore its determination is REVERSED.

Accordingly it is ORDERED:

1. The Department shall initiate reopening of the Claimant's FIP case retroactive to 9/1/12, the date of closure, due to non compliance with Work First.
2. The Department shall initiate reinstatement the Claimant to her FAP group and shall issue a FAP supplement for FAP benefits the Claimant was otherwise entitled to receive.
3. The Department shall issue a supplement to the Claimant for FIP benefits the Claimant was otherwise entitled to receive in accordance with Department policy.

2012 73297/LMF

4. 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 August 28, 2012.

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

Date Signed: _____

Date Mailed: _____

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

LMG/hw

2012 73297/LMF

cc: Wayne County DHS (57)/ 1843
R. Gruber
FIP
FAP
L. Ferris
MAHS