

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES



Reg. No.: 2012-6794
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: December 8, 2011
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 December 8, 2011. The claimant appeared and testified. [REDACTED], FIM and [REDACTED], FIS appeared on behalf of the Department.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction closing the Claimant's FIP case for noncompliance with work-related 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. The Claimant was an active FIP recipient and her case was closed due to non compliance with Work First attendance.
2. The Claimant was sent a notice of Non Compliance on September 16, 2011 scheduling the Claimant for a triage for no participation in scheduled activity. Exhibit 1.
3. A triage was held on September 27, 2011, which was not attended by the Claimant.
4. The Claimant did not get the Notice of Non Compliance letter until several hours after the triage was held. The Claimant reported to the Department that day and requested an opportunity to have a triage in light of the late delivery of the notice.

5. The Claimant was found in non compliance for failing to attend Work First and a finding of no good cause was made.
6. Pursuant to Notice of Case Action dated September 29, 2011 the Claimant's FIP case was closed for three months effective November 1, 2011.
7. On September 1, 2011 the Claimant began employment which was confirmed by the Department. The Claimant did not report the employment to the Department within 10 days of starting employment, but did report the employment to the Work First program approximately one and a half weeks before she began her employment.
8. The Work First notes indicate that she was sent two letters during the period that in August 2011 warning her she was not meeting attendance requirements.
9. The Claimant requested a hearing on October 18, 2011 protesting the closure of her FIP 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 (formerly known as the Family Independence Agency) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called "noncompliance". BEM 233A defines noncompliance as failing or refusing to, without good cause:

...Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider..." BEM 233A p. 1.

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, for the first occurrence of noncompliance on the FIP case, the client can be excused. BEM 233A.

Furthermore, JET participants cannot be terminated from a JET program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. If a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date. BEM 233A.

If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

Before the Administrative Law Judge can review a proper good cause determination, there must first be a determination of whether the claimant was actually non-participatory with the hour requirements for the JET program.

In this case the Claimant advised the Work First program that she found a job and was starting September 1, 2011. She was advised that she did not have to attend, but was required to job search. The case notes from the Work First program submitted by the Department do not confirm the Claimant's testimony and contain no reference to her beginning employment. The notes also contain reference to two letters sent in the third and fourth weeks in August advising the Claimant that she was in non compliance with attendance requirements. The Claimant testified that she did not receive either of these letters and the Work First program officer whom she spoke to and who wrote the letters did not attend the hearing.

A review of the record indicates that the evidence is conflicting as to whether the Claimant told the Work First program that she was beginning employment. One fact is confirmed, and is that the Claimant started employment September 1, 2011. The Claimant's testimony was credible that she advised Work First about her job offer. Because no one from Work First with actual knowledge was available to testify, the actual requirements of the Claimant's participation prior to her starting work were not established. It is determined that the Department did not sustain its burden of proof. This decision was also influenced by the fact that the Claimant actually fulfilled the purpose of the Work First program - which is to find a job. As it is unclear what the Work First program required of the Claimant to be in compliance, the Department did

not meet its burden to demonstrate no good cause. Non attendance per se in light of the Claimant's testimony does not establish non participation.

After a careful examination of the documentary evidence provided by the Department, and the testimony of the witnesses, the Administrative Law Judge has determined that the Department has erred and has not met its burden of proof. The Claimant provided good cause reason for her non attendance periods because she had a job offer and began work when she said she would. The Claimant is also reminded that she must continue to report changes in her employment status to the Department within 10 days of any change.

It must be remembered that the goal of the Work First program is to help individuals find jobs. Job search becomes less meaningful when an individual has been offered a job. BEM 233A. The Department's finding of no good cause and the imposition of a three month sanction closing the Claimant's FIP cash assistance case is in error and must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department's finding of no good cause and the imposition of a 3 month closure of the Claimant' FIP case is in error and is REVERSED. Accordingly, it is ordered:

1. The Department shall initiate reopening the Claimant's FIP case retroactive to the date of closure October 1, 2011 and shall determine in light of the Claimant's employment status whether the Claimant is entitled to receive FIP benefits. If the Department determines that the Claimant is otherwise still eligible for FIP the Department, shall supplement the Claimant for any FIP benefits she was otherwise entitled to receive.
2. The Department shall delete the three month sanction and finding of no good cause with regard to the Claimant's non compliance with Work First and remove any relevant disqualification from the Claimant's Work First history resulting from the triage held on September 27, 2011.


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

2011316/LMF

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:
 - 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:

