

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-5725
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 29, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 29, 2009. Claimant personally appeared and testified. Also present at the hearing was claimant's [REDACTED].

ISSUE

Did the department correctly terminate claimant's Family Independence Program (FIP) benefits in October, 2008?

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 a FIP recipient and a mandatory Work First/Jobs, Education and Training (WF/JET) participant when the department mailed her a Notice of Employment and/or Self-Sufficiency Related Noncompliance on September 10, 2008. This notice stated that the

claimant did not comply due to “abusive behavior” on September 5, 2008, and informed her of the triage meeting on September 18, 2008 to discuss her reasons for the alleged noncompliance (Department’s Exhibit #3).

2. Claimant reported for the triage and signed a First Noncompliance Letter that was witnessed by her caseworker [REDACTED]. The letter states “You agreed to do the activities listed below to avoid losing your FIP benefits”. The activities listed are “job search” of 40 hours. No start date is written in on the form. Furthermore, while the form is signed by the claimant and the caseworker on September 18, 2008, date of the triage, this same date is typed in as the deadline for the claimant to verify she performed the activities (Department’s Exhibit #4).

3. Claimant was sent to Goodwill Industries to take an academic assessment test on September 23, 2008. Goodwill’s Notice of Case Action dated September 23, 2008 indicates that the claimant’s academic assessment test scores are below program eligibility levels, and she does not meet program entry criteria (Department’s Exhibit #6).

4. On department’s copy of Goodwill’s Notice of Case Action it is written in that the claimant was given the opportunity to re-test on September 24, 2008 at 9:00 AM, but failed to report.

5. Claimant’s copy of Goodwill’s Notice of Case Action faxed immediately following the conclusion of the hearing does not have the hand-written notation that she was to return to re-test the following day. There is no indication on this copy that the claimant was to return to re-test the following day. The Notice simply states that the claimant is ineligible to participate in the Goodwill program as she does not meet program entry criteria (Claimant’s Exhibit I).

6. Department completed a Good Cause Determination form on same date following September 24, 2008, as the fact that the claimant did not report for re-testing on this date is

included in the narrative on this form. Date that the form was completed is unknown, as the date area on top of the form has been covered by liquid used in office settings to “white out” what is previously written or typed (Department’s Exhibit #2).

7. Department terminated claimant’s FIP benefits on October 14, 2008. Claimant requested a hearing on October 16, 2008 quoting Goodwill Industries staff as allegedly telling her that if she failed the TABE test she will get a referral back to her worker, and when she failed the test she was told she cannot take the test over.

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).

That the claimant was a FIP recipient and a mandatory WF/JET participant is not in dispute. Department’s policy instructs the department to schedule a triage for a WF/JET noncompliant client to discuss client’s reasons for the noncompliance. If no good cause is found for a client’s noncompliance with WF/JET program, client is to be offered the First Noncompliance Letter, DHS-754, specifying activities they are to complete within a certain period of time in order to prevent the closure of their FIP case. PEM, Item 233A.

In claimant case, a triage was held on September 18, 2008, and she signed a DHS-754 on this date agreeing to 40 hours of job search. DHS-754 does not have a start date completed for these activities, and also tells the claimant to complete the job search by September 18, 2008.

Claimant states she did complete the 40 hours of job search as she was required to do, and department's representatives do not appear to dispute this. Therefore, the claimant did complete activities required by DHS-754 in order to keep her FIP grant active.

Department's representatives then state that the activities specified on DHS-754 that the claimant appears to have completed are not the reason why her FIP grant was to be terminated. Department's representatives state that the claimant was required to report to Goodwill Industries on September 23, 2008 to take the academic assessment test. Claimant did so and failed the test. However, claimant disputes department's assertion that she was told to return to Goodwill Industries the following day to retake the portions of the test that she failed. Claimant testified that she was told that she failed the test and she left Goodwill Industries at 1:00 pm on September 24, 2008. JET Coordinator present at the hearing was asked to specify when she told the claimant to return to Goodwill Industries for September 24, 2008 re-testing. JET Coordinator stated that she did not say this to the claimant personally, and that while the Notice of Case Action (See Finding of Fact #3) states that the claimant failed the academic assessment test and she therefore does not meet program entry criteria, she decided to give the claimant a chance to re-take the portion of the test after speaking to one of the two Workforce Development Specialists that are in charge of giving such tests. JET Coordinator could not at first name the Specialist she talked to about the claimant, but then named one of them. JET Coordinator also was unable to specifically state at what time on September 23, 2008 and by whom the claimant was told she had to return on September 24, 2008. This Administrative Law Judge is of the opinion if the claimant was indeed required to return on September 24, 2008, such requirement would have been written on her copy of the Notice of Case Action. Without such writing and with unspecific testimony of the JET Coordinator, a conclusion that the claimant was indeed told to return to Goodwill Industries on September 24, 2008 cannot be reached.

In conclusion, the claimant did complete the activities listed on DHS-754 given to her at the September 18, 2008 triage appointment, and her FIP benefits cannot be terminated based on this triage requirement. FIP benefits should have therefore continued without interruption. Department and/or WF/JET staff then decided to send the claimant to Goodwill Industries for testing on September 23, 2008, an activity not listed on DHS-754, and therefore not required in order for claimant's FIP case to continue. If the department and/or WF/JET staff were of the opinion that the claimant somehow again did not comply with WF/JET requirements due to claimant's failure to re-take the test on September 24, 2008 after she was told allegedly to do so (allegation disputed by the claimant), departmental policy requires that another triage meeting be scheduled as this would be a new instance of alleged WF/JET noncompliance. The department however, terminated claimant's FIP benefits without scheduling such triage appointment.

It is also noted that neither the evidence provided by the department or the testimony of departmental representatives is sufficiently persuasive to conclude that the claimant was indeed notified/told that she had to return to Goodwill Industries on September 24, 2008. Therefore, the claimant should not be considered WF/JET noncompliant due to this issue.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly terminated claimant's FIP benefits in October, 2008.

Accordingly, department's action is REVERSED. Department shall:

1. Reinstate claimant's FIP benefits retroactively to October 14, 2008 closure.
2. Issue the claimant retroactive FIP benefits she did not receive as a result of this closure.
3. Notify the claimant in writing of this action.

4. Not consider claimant's alleged failure to report for re-testing on September 24, 2008 as an instance of possible non-compliance, as department's evidence and testimony did not persuasively dispute claimant's testimony that she was never told to do so.

5. Refer the claimant back to WF/JET for engagement in employment-related activities.

SO ORDERED.

/s/
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 5, 2009

Date Mailed: February 6, 2009

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.

IR/om

cc:

[REDACTED]

Administrative Hearings (2)