

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

IN THE MATTER OF:



Reg.No. 2013 11247
Issue No. 1038
Case No. [REDACTED]
Hearing Date: April 3, 2013
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 April 3, 2013 from Detroit, Michigan. The Claimant appeared and testified. [REDACTED], Path Coach, appeared 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 and imposed a sanction (3 months)?

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 recipient of FIP benefits.
2. On July 25, 2012 the Claimant was sent a Work Participation Appointment Notice to attend Work First orientation on August 6, 2012. Exhibit 2
3. On August 17, 2012 the Claimant was sent a Notice of Non-Compliance scheduling a triage for October 23, 2012 noting a Non-Compliance date of August 14, 2012. The Claimant attempted to reschedule the triage by phone, Claimant's triage was not rescheduled and Claimant's caseworker did not return the call.

4. The Department did not present any witnesses who attended the triage and could not say if a triage was held which determined good cause. The Department did not provide Exhibit 4 admitted at the hearing and to be faxed to the undersigned after the hearing, and thus no notes were provided demonstrating why the Claimant was found in non-compliance without good cause.
5. The Claimant presented the Department a note from her doctor dated July 9, 2012 indicating she was scheduled for hand surgery for a tumor removal with nerve involvement on [REDACTED] and indicating she could not use her right hand and that restrictions would apply for 6 months. Exhibit 1
6. The Department did not process a deferral.
7. The Claimant advised the Work First program that she could not attend orientation due to hand surgery on [REDACTED]; at the time she was wearing a cast from the surgery on her right hand. Claimant Exhibit A
8. The Department issued a Notice of Case Action on October 17, 2012 closing the Claimant's FIP case effective November 1, 2012 for non-participation with Work First requirements. The Department also imposed a 3 month closure sanction.
9. The Claimant requested a hearing on November 13, 2012 protesting the closure of the Claimant's FIP case due to non-compliance with Work First participation requirements.

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 non-compliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the non-compliant person. BEM 233A Failure to comply without good cause results in FIP closure. BEM 233A The second occurrence of non-compliance results in a 6 month FIP closure. BEM 233A The third occurrence results in a lifetime disqualification from receiving FIP benefits.

JET participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss non-compliance 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 non-compliance is FIP closure. 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 non-compliance is FIP closure.

In this case the Claimant was assigned to attend Work First orientation and did attend but she had a cast on her right hand due to hand surgery.

Additionally, I find that the Claimant was not sent a medical needs form in light of her doctor’s letter of July 19, 2012 and should have been sent a medical needs form or other request for medical verification of her medical condition and the effects of her asserted medical conditions. BEM 230 A requires that for short term incapacity (less than 90 days) verification must be obtained by obtaining a medical needs form. Additionally for longer incapacity or when an MRT decision has already been issued and the Claimant is claiming a new medical condition, new verifications are to be obtained. Department of Human Services Bridges Eligibility Manual (BEM) 230 A pp. 11 and pp.13 (1/2013)

Therefore, it is determined based upon the evidence presented at the hearing and the testimony of the parties that the Department did not comply with Department policy regarding the requirements obtaining additional medical verification with regard to the Claimant’s medical conditions, did not provide a medical needs form and did not process a deferral. The testimony at the hearing demonstrated that the Claimant did

attend Work First orientation and the Department did not establish that a triage was held. The question whether the Claimant has reached the 60 month federal time limit was not considered as the Notice of Case Action which closed Claimant's case, closed the case due to the Claimant's failure to participate in employment-related activities.

Under these circumstances, the Department did not demonstrate a basis for the closure of Claimants' FIP case. In light of Claimant's doctor's note provided to the Department prior to the Work First orientation, the Department should have processed a deferral from attending Work First. The Department did not have the case file at the hearing and did not demonstrate that a triage was held. Under these circumstances it is demonstrated that the Department did not meet its burden of proof.

Based on the above Findings of Fact and Conclusions of Law and for the reasons stated on the record at the hearing, the testimony of witnesses and the documentary evidence received, the Department has not 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 therefore also improperly imposed a 3 month sanction. BEM 230 A and BEM 233A

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly when it closed the Claimant's FIP case and imposed a 3 month sanction.

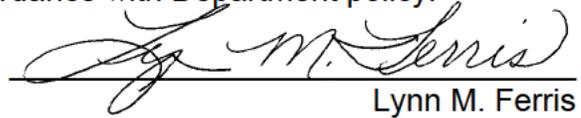
Accordingly, the Department's decision is REVERSED for the reasons stated on the record and in this Decision.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall reinstate the Claimant's FIP case retroactive to the date of closure, (November 2, 2012) and shall remove the sanction which it imposed on the Claimant from the Department's and Claimant's case record.
2. The Department shall process a deferral and provide the Claimant a medical needs form to determine if the Claimant should be deferred from attending the Work First program.

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3. The Department shall issue a supplement of FIP benefits, if any, the Claimant was otherwise entitled to receive in accordance with Department policy.



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

Date Signed: April 10, 2013

Date Mailed: April 10, 2013

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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

