

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

IN THE MATTER OF:



Reg.No. 2013 33026
Issue No. 1038
Case No. [REDACTED]
Hearing Date: April 3, 2013
Wayne County DHS (35)

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. The Claimant appeared and testified. [REDACTED], FIS, 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.

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 Work First and was attending and meeting her compliance requirements.
2. The Claimant was assigned to community service which she attended. The Claimant was asked to clean some furniture as part of her community service assignment with cleaning solution and water and asked for gloves as she had eczema. She was advised that there were no gloves and was told there was nothing further for her to do that day.
3. The Claimant reported what happened to her case manager at Work First the same day and was given gloves.
4. The next time Claimant reported to community service program she was told there was nothing for her to do.

5. The Claimant again went back to Work First and was told to request a change in community service location.
6. The Claimant continued to perform job search as required and did not hear back regarding her request for assignment to another community service location.
7. The Department sent a notice of non-compliance on February 15, 2013 scheduling a triage for February 21, 2013. The Claimant did not receive the Notice until after the triage had occurred.
8. The Department granted the Claimant a phone triage on March 5, 2013 and found no good cause.
9. The Department issued a Notice of Case Action on February 15, 2013 closing the Claimant's FIP case effective March 1, 2013 and imposing a three month sanction.
10. The Claimant requested a hearing on February 28, 2013 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 ("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 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 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. BEM 233a provides direction to the Department as follows when determining good cause:

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.

In this case, the Claimant attended the Work First program and was meeting her participation job search requirements. The Claimant was assigned to attend community service and was asked to clean furniture with cleaning solution and asked for gloves. The community service organization did not have or provide Claimant gloves and she was told there was no other work for her to perform. The Claimant reported the situation to her Work First case manager and was given gloves to use. The next time the Claimant reported to community service she was told to leave and that there was nothing further for her to do. At this point Claimant requested that she be reassigned to a different community service program. The Claimant's testimony was very clear and credible.

No one from the Work First program who attended the triage and who had first-hand knowledge of the facts attended the hearing and thus Claimant's credible testimony was un rebutted. Based upon the Claimant's testimony the Claimant appeared to have attempted to participate and although the case notes submitted with the hearing packet indicate that she was removed from the community service assignment due to showing up with an attitude, no one who spoke directly to the community service witness was present to indicate what this statement meant. Additionally the Claimant testified that she did request another assignment for community service as directed by her case manager even though the case notes, written by someone not in attendance, indicated otherwise. Exhibit 3.

After reviewing the documents submitted at the hearing and the testimony of the parties provided under oath, it is determined that the Department did not meet its burden of

proof to demonstrate that it correctly determined that the Claimant failed in her Work First participation requirements or failed to demonstrate good cause.

It is determined that the Department incorrectly found no good cause and instituted closure of the Claimant's FIP case and imposition of a 3 month sanction.

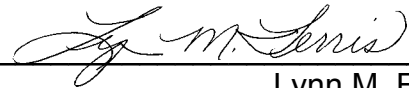
Based on the above Findings of Fact and Conclusions of Law and the testimony of witnesses and the documentary evidence received, the Department has not demonstrated that it correctly followed and applied Department policy in closing and sanctioning the Claimant's FIP case for non-compliance without good cause and imposing a 3 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 incorrectly closed the Claimant's cash assistance FIP case, and improperly imposed a 6 month sanction on closing the Claimant's case for non-compliance with work-related activities for non-participation with the Work First program. Accordingly, the Department's determination is REVERSED.

Accordingly it is ordered:

1. The Department shall initiate reinstatement of the Claimant's FIP case retroactive to the date of closure (March 1, 2013).
2. The Department shall supplement the Claimant for any FIP benefits she was otherwise entitled to receive in accordance with Department policy.
3. The Department shall remove from its records the 3 month sanction it imposed on the Claimant as a result of a triage conducted on March 5, 2013.



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

LMF/cl

cc:

