

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

[REDACTED]

[REDACTED]

Reg.No. 2013 38384
Issue No. 1038,
Case No. [REDACTED]
Hearing Date: April 25, 2013
Wayne (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 April 25, 2013. The Claimant appeared and testified. [REDACTED], FIM, appeared on behalf of the Department.

ISSUE

Whether the Department correctly sanctioned and closed the Claimant's cash assistance (FIP) for noncompliance 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 and was required to participate in job search activities as part of her Work First participation (Path).
2. The Department scheduled a triage on March 8, 2013 after the Claimant was having attendance problems and found good cause because the Claimant did not have day care. The Claimant agreed to reengage with the program and report back on March 11, 2013.
3. The Claimant did not report to Work First as assigned and another triage was scheduled for March 19, 2013.

4. A triage was held and the Department found no good cause. At the triage it was determined that the Claimant had not attended the program to reengage.
5. The Claimant did not attend the triage and did not advise the Department due to a domestic situation at her home which occurred on March 17, 2013 when her boyfriend was arrested. At the time of the arrest the Claimant's boyfriend had the keys to Claimant's home and she could not lock her house.
6. The Claimant provided a police report of an incident at her home on March 17, 2013 which resulted in her boyfriend being arrested for simple assault/assault and battery of the Claimant due to an argument. The Claimant was not treated medically. Claimant Exhibit A.
7. The Claimant did not call her caseworker or the Path Program to reschedule the triage scheduled for March 19, 2013 and did not request a telephone hearing.
8. The Claimant did not apply for child day care during the entire time she was assigned to participate in the Path program.
9. The Department sent a Notice of Case Action to the Claimant on March 12, 2013 closing her FIP case effective April 1, 2013 which imposed a sanction closing the Claimant's FIP case for 3 months (first sanction) effective April 1, 2013 through June 30, 2013 due to noncompliance without good cause to participate in employment and work participation activities as required.
10. The Claimant requested a hearing on March 25, 2013 protesting the closure of her FIP cash assistance 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 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 occurrence of noncompliance 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 noncompliance, 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 noncompliance is FIP closure. However, a failure to participate can be overcome if the client has good cause. The penalty for noncompliance is FIP closure.

In this case, the Claimant was deemed in noncompliance with Work First requirements because she did not reengage after the first triage when she was given time to obtain child care and report the following week. Exhibit 2. At no time during the time she was assigned to Work First did Claimant apply for child day care benefits. The Claimant's testimony that her caseworker told her she could not apply for day care until she was in compliance is not credible. An individual attending Work First is required to apply for day care so that they can attend. Notes of the first triage when Claimant was given another chance to attend the Work First program indicate the importance of Claimant obtaining child day care. Although Claimant's chosen day care refused to allow her to bring her children unless she paid a deposit, the Claimant at no time advised the Path Program or her caseworker of her lack of a deposit and did nothing to apply for day care. Subsequently when the Claimant did not return to the program, a second triage was held on March 19, 2013. The Claimant knew about the triage but claimed due to a domestic situation, involving the arrest of her boyfriend for assaulting her on March 17, 2013 the Claimant could not attend the triage. The Claimant could not attend the triage because her boyfriend was arrested with her only house keys and she could not leave the house because she could not lock the house. Even though this situation may have occurred, the Claimant at no time sought to reschedule the triage or schedule a phone triage.

2013-38384/LMF

BEM 233A also provides:

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

Failing or refusing to:

Appear and participate with the work participation program or other employment service provider.

Provide legitimate documentation of work participation.

Appear for a scheduled appointment or meeting related to assigned activities.

Participate in employment and/or self-sufficiency-related activities.

Participate in required activity.

In this case, the uncontroverted testimony and evidence is that the Claimant did not attend the program after her reengagement and did not apply for child day care so that she could attend and, lastly, did not call to reschedule the March 19, 2013 triage due to either domestic violence and assault occurring on March 17, 2013 or attempt to schedule a phone triage. It did not appear that Claimant was in need of medical care on March 17, 2013 after the assault based upon the police report she provided, but rather she was attempting to regain the keys to her house. In this case the list of good cause reasons were reviewed and it is determined based upon the evidence presented at the hearing and the testimony of the parties, that the Claimant did not demonstrate or meet any of the good cause reasons set forth below:

Good Cause includes the following:

Employed 40 Hours

The person is working at least 40 hours per week on average and earning at least state minimum wage.

Client Unfit

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations

that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

Illness or Injury

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

Reasonable Accommodation

The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

No Child Care

The client requested child care services from DHS, the work participation program, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

Appropriate.

The care is appropriate to the child's age, disabilities and other conditions.

Reasonable distance.

The total commuting time to and from work and the child care facility does not exceed three hours per day.

Suitable provider.

The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/ licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

Affordable.

The child care is provided at the rate of payment or reimbursement offered by DHS.

No Transportation

The client requested transportation services from DHS, the work participation program, or other employment services provider prior to case

closure and reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

Long Commute

Total commuting time exceeds:

Two hours per day, not including time to and from child care facilities **or**

Three hours per day, including time to and from child care facilities.

The Family Independence Program (FIP) and Refugee Assistance Program Cash (RAPC) are temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP and RAPC engage in employment and self-sufficiency-related activities so they can become self-supporting. Department of Human Services Bridges Eligibility Manual (BEM) 230A (January 2013)

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. Our focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause. BEM 233A

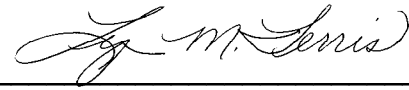
The Department's evidence demonstrated that it had sufficient non-participation with Work First requirements by the Claimant to determine noncompliance by the Claimant for failing to participate and re-engage after her first triage. I do not find that the loss of her keys requiring her to stay home is a sufficient event under the circumstances to cause her to not call to reschedule or to request a phone triage. Thus it must be found that the Department correctly closed the Claimant's FIP cash assistance case and imposed a 3 month sanction for noncompliance with work-related activities. It is therefore determined that the Department properly applied and followed Department policy in taking its action in this case.

The Claimant can reapply for FIP benefits at the end of the sanction period, but should be aware that a further imposition of a second sanction will result in a 6 month closure and a third sanction will result in Claimant's lifetime disqualification from receiving FIP benefits.

Based on the above Findings of Fact and Conclusions of Law, the testimony of witnesses and the documentary evidence received, the Department has demonstrated that it correctly followed and applied Department policy in closing and sanctioning the Claimant's FIP case for noncompliance without good cause and imposing a 3 month sanction. BEM 233A pp 5 (1-1-13).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Department correctly closed the Claimant's cash assistance FIP case and correctly imposed a 3 month sanction on closing the Claimant's case for noncompliance with work-related activities. Accordingly, the Department's determination is AFFIRMED.



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

Date Signed: May 2, 2013

Date Mailed: May 2, 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.

2013-38384/LMF

Request must be submitted through the local DHS office or directly to MAHS by mail at

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

LMF/cl

cc:

