

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

IN THE MATTER OF:

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Reg.No. 2013-42648
Issue No. 1038
Case No. ██████████
Hearing Date: June 17, 2013
Oakland (04)

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, an in person hearing was held in Pontiac, Michigan on June 17, 2013. The Claimant appeared and testified. ██████████ Jet Case Manager, 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.
2. The Claimant was sent a Notice of Non Compliance on November 15, 2012 due to being fired from her job.
3. A triage was held on November 26, 2012 and the Claimant was given an opportunity to provide evidence that she had retained an attorney to sue the employer regarding her termination.
4. The Claimant did not provide the documentation to the Department and a finding of no good cause was found and determined as of November 27, 2012.

5. The Department issued a Notice of Case Action on November 15, 2012 which closed the Claimant's FIP Cash Assistance case for a lifetime effective December 1, 2012.
6. The Claimant contested the imposition of a lifetime sanction claiming she had not previously received 3 sanctions.
7. The Claimant requested a hearing in November 2012 and April 18, 2013 protesting the closure of her FIP cash assistance and imposition of a lifetime closure sanction.

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 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 noncompliance 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 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.

At the hearing the Claimant conceded that after the triage, she did not turn in the requested documentation to substantiate that she had hired an attorney to contest her firing and termination by the employer. Therefore, the Department properly found no good cause and closed Claimant's FIP case effective December 1, 2012.

In this case, the issue concerns the number of sanctions applied to the Claimant by the Department for noncompliance with the Work First program requirements without good cause. The evidence presented by the Department established that prior to the most recent sanction imposed December 1, 2012, the Claimant's FIP case closed in April 2010 and no other closures were shown other than the current closure for December 1, 2012.

A review of the Non Cooperation Summary, indicated that several No Good Cause Findings for May 2007, August 24, 2009, December 22, 2009 and November 15, 2012. Exhibit 2. Each of these events was reviewed during the hearing. The Department testified that the no good cause finding in 2007 was not counted by the Department as during that period the first noncompliance was waived. Thus the August and December 2009 noncompliance no good cause dates were next considered. Based upon the records presented the Eligibility Summary showed only one FIP case closure dated April 10, 2010 before the current closure of December 2, 2012. Thus based upon the Department's records it did not appear that two closures arose from the 2009 dates showing no good cause. Additional records also presented show a triage action notice arising in December 2009, and notes of the Work First records presented demonstrate that the only non compliance resulting in closure arose in December.

Based upon the evidence presented at the hearing the Department did not establish that the Claimant was deemed in noncompliance with Work First requirements without good cause three times therefore its imposition of a lifetime sanction was in error.

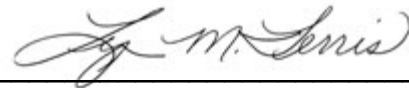
Based on the above Findings of Fact and Conclusions of Law, the testimony of witnesses and the documentary evidence received, it is determined that the Department issued a lifetime sanction in error and therefore must correct its Notice of Case Action to indicate a 6 month closure, not a lifetime closure. BEM 233 A.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Department incorrectly imposed a lifetime sanction and closed the Claimant's cash assistance FIP case. Accordingly, the Department's determination is REVERSED.

Accordingly it is ORDERED:

1. The Department shall reinstate the Claimant's FIP case and shall issue a correct Notice of Case Action with closure as of December 1, 2012 to reflect that the Claimant's FIP case is to close for 6 months as a result of the triage held on November 26, 2012.
2. The Department shall correct its records and the Claimant's case record to reflect that the Claimant was subject to a second sanction as a result of the November 26, 2012 triage, not a third sanction for closure due to non-compliance with Work First without good cause.



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

Date Signed: June 25, 2013

Date Mailed: June 25, 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)

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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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