

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

IN THE MATTER OF:



Reg. No.: 2013-4587
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: December 12, 2012
County: Wayne (82-57)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on December 12, 2012, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly close and sanction Claimant's case for Jobs, Education and Training (JET) noncompliance?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was a FIP recipient.
2. Claimant was a mandatory JET participant.
3. Claimant had mandatory work hours requirement of 20 hours per week.
4. Claimant started a job on August 20, 2012, averaging above 20 hours per week.
5. Claimant was sent a New Hire Client notice (DHS-4635) on September 12, 2012, asking for verification of the amount of hours worked per week and the rate of pay for those hours.

6. The due date on the New Hire Client notice was September 24, 2012.
7. Claimant did not return verification of employment until November 9, 2012.
8. Claimant allegedly did not meet participation requirements on September 24 and September 28, 2012.
9. On October 1, 2012, the Department sent Claimant a DHS-2444, Notice of Noncompliance, scheduling Claimant for a triage on October 9, 2012.
10. Claimant did not attend the triage.
11. Claimant was sent a notice of case action on October 1, 2012, closing her case for JET noncompliance.
12. Claimant's case was sanctioned for JET noncompliance as of November 1, 2012.
13. This is Claimant's first alleged incident of noncompliance.
14. On October 9, 2012, Claimant requested a hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

All FIP and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full time must be referred to the JET Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. Clients who have not been granted a deferral must participate in employment and/or self-sufficiency-related activities to increase their employability and to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called “noncompliance.” BEM 233A defines noncompliance as failing or refusing to, without good cause:

“... Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider...” BEM 233A, p. 1.

However, non-participation 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 non-participatory person. BEM 233A. A claim of good cause must be verified and documented.

The penalty for noncompliance is FIP closure. BEM 233A.

Furthermore, JET participants cannot be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. At these triage meetings, good cause is determined 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 the Department or MWA. BEM 233A. If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving

transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

A FIP application can be denied for “noncompliance.” BEM 233A.

When a New Hire Client Notice, DHS-4635, is requested, Bridges automatically gives the client 10 calendar days to provide verification from the date the forms were requested. If the verifications are not returned by the 10th day, the case will close for a minimum of 30 days after appropriate actions are taken in Bridges. BAM 807, p. 1 (2012)

The Administrative Law Judge must only consider whether the action of the Department was correct at the time that it took the action. While Claimant undisputedly turned in verifications that confirmed working an average of over 20 hours per week in November 2012, Claimant did not verify until after the Department had made its decision. Therefore, as the undersigned can only base the decision on what the Department knew at the time of the action and whether that action was correct, whether Claimant was actually working becomes irrelevant to the case, as Claimant did not confirm that she was meeting hour requirements until well after the action had been taken.

This is not to say that the Department was unaware that Claimant was working; the Department had received notification from other agencies that Claimant was working, and the Department, in fact, sent Claimant a DHS-4635 to verify her hours.

However, the Department was unaware as to how many hours Claimant was working and whether those hours satisfied Claimant’s 20 hour per week work requirement. At the time the Department took action, Claimant had not contacted the Department, nor turned in any verification of work hours; therefore, the Department only knew that the claimant was working some unspecified number of hours, was not attending JET, and was unaware as to whether Claimant was meeting her hour requirements.

When Claimant did not attend triage, the Department had to make a decision based on the information it had on hand: Claimant had missed JET on September 24 and September 28, Claimant had presented no evidence that she was meeting her hour requirements, and Claimant had provided no explanation as to why she was not meeting her hour requirements or whether she had good cause for meeting her hour requirements.

If these were the only facts of the case, the undersigned would hold that the Department was correct to close and sanction Claimant’s FIP case, based on the knowledge the Department had at the time of the action.

Unfortunately, while the Administrative Law Judge holds that the Department was ultimately correct to close the case, the reasoning behind the closure was incorrect, as was the application of a three-month sanction.

Claimant was sent the DHS-4635 on September 12, 2012. Claimant is unable to credibly allege that she did not receive this notice, as she ultimately returned it on November 9, 2012.

The notice specifically gives a due date of September 24, 2012, for Claimant to provide all verifications of her hours and income and, in addition, specifically states that "Failure to provide this information by the due date will result in the cancellation of your public assistance benefits."

This statement is supported by BAM 807, which states that when a DHS-4635 is not returned, the case is to close for a minimum of 30 days.

Claimant did not become non-participatory with JET until September 28, 2012, was not referred to triage until October 1, 2012, and, furthermore, was not found noncompliant with JET until October 9, 2012. Claimant's case was not sanctioned, per MIS case notes, until November 1, 2012.

These noncompliance actions, including the triage notice, case closure for noncompliance, sanction, and the non-participatory actions themselves did not occur until *after* Claimant's case should have closed for failing to return the DHS-4635.

In short, while the undersigned holds that the Department was correct to close the case, the undersigned holds that the case should have closed on September 25, 2012, before noncompliance was even possible.

BEM 233A states that a cash recipient who refuses to participate in work-related activities may be found noncompliant and sanctioned. As of September 24, 2012, the due date of the DHS-4635, Claimant should no longer have been a cash recipient. As such, Claimant had no duty to go to JET, could not have been noncompliant, and could not have been sanctioned.

Case actions should be taken in the order that they occur. Claimant failed to return required verifications before she was non-participatory with JET. As such, while the Department was correct to close Claimant's case, the Department was incorrect to close the case for noncompliance and attach a three-month FIP sanction to that closure.

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 act properly when closing Claimant's case and terminating her FIP benefits.

did not act properly when applying a three-month sanction and penalty to Claimant's FIP benefit case..

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is PARTIALLY REVERSED for the reasons stated on the record.

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

1. Remove the penalty for FIP noncompliance from Claimant's Department record, and remove the three-month sanction for that penalty.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 14, 2013

Date Mailed: January 14, 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.

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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

RJC/pf

cc:

