

**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.: 2014-4250
2013-5056 RECON
Issue No.: 1038
Case No.: ██████████
Hearing Date: December 12, 2012
County: Sanilac

SUPERVISING ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

AMENDED ORDER AND DECISION OF RECONSIDERATION

THIS DECISION IS AMENDED FOR THE SOLE PURPOSE OF ADDING APPEAL RIGHT LANGUAGE. NO OTHER CHANGES HAVE BEEN MADE.

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the Department of Human Services' ("Department") timely Request for Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge ("ALJ") at the conclusion of the hearing conducted on December 12, 2012, and mailed on December 20, 2012, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual ("BAM"), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was issued on October 15, 2013.

ISSUE

Whether the ALJ erred in reversing the Department's determination which terminated Claimant's cash assistance ("FIP") finding the Claimant's non-compliance with the Work First/Jobs, Education, and Training ("WF/JET") program?

FINDINGS OF FACT

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

1. Findings of Fact Nos. 1 through 8 from the Hearing Decision mailed on December 20, 2012, under Registration Number 2013-5056 are incorporated by reference.
2. On December 12, 2012, a hearing was conducted resulting in a Hearing Decision that reversed the Department's actions and ordered the Department to issue a new Notice of Case Action.
3. The Hearing Decision was mailed on December 20, 2012.
4. On or about December 26, 2012, a timely Request for Reconsideration was received from the Department.
5. On October 15, 2013, the Request for Reconsideration was granted.

CONCLUSIONS OF LAW

In the instant case, the Department's Request for Rehearing/Reconsideration alleges that the ALJ misapplied Department policy as it pertains to the adherence to BEM 233A. Specifically, the Department contends the ALJ failed to adhere to BEM 233A as it relates to triage and the processing of the FIP closure.

Department policies are contained in the BAM, the Bridges Eligibility Manual ("BEM"), and the Reference Tables ("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, Rules 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children ("ADC") program effective October 1, 1996.

BEM 233A provides that program participants will not be terminated from the work participation program without first scheduling a triage meeting with the client to jointly discuss non-compliance and good cause. BEM 233A (May 2012), p. 7. Good cause is determined during triage. BEM 233A, p. 7. Pursuant to BAM 220, A Notice of Case Action must provide the reason(s) for the action. BAM 220 (July 2012), p. 9. Clients must comply with triage requirements and provide good cause verification *within the negative action period*. BEM 233A, p. 7. Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 8. Good

cause must be considered even if the client does not attend the triage. BEM 233A, p. 8. Good cause must be verified and provided prior to the end of the negative action period. BEM 233A, p. 9.

A negative action is the Department's action to deny an application or reduce, suspend, or terminate a benefit. BEM 220 (July 2012), p. 1. The Notice of Case Action must specify the action(s) being taken by the Department; the reason(s) for the action; the specific manual item which cites the legal base for the action or the regulation/law itself; an explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is requested. BEM 220, pp. 1, 2; BAM 600 (August 2012), p. 1. Generally, timely notice is required for a negative action. BEM 220, p. 3. When a client provides information to meet the requirement that caused the negative action, the negative action is deleted. BAM 220, p. 10.

The penalty for non-compliance without good cause is FIP closure. BEM 233A, p. 6. An individual FIP case closes for not less than three calendar months for the first occurrence of non-compliance, not less than 6 months for the second occurrence of non-compliance, and a lifetime sanction for the third occurrence. BEM 233, p. 6. The individual penalty counter begins April 1, 2007. BEM 233A, p. 6.

In the record presented, on September 24, 2012, the Department sent a Notice of Non-compliance and a Notice of Case Action to Claimant. Pursuant to policy, the Department scheduled a triage *within* the negative action period as provided for in BEM 233A. A negative action period doesn't exist until a Notice of Case Action is generated. The Notice of Case Action ("Notice") provided that the Department **intended** on closing benefits effective November 1, 2012. The Notice explained the reason for the **intended** action effective November 1st, as

"[y]ou or a group member failed to participate in employment and/or self-sufficiency-related activities or you quit a job, were fired, or reduced you hours of employment without good cause."

Here, the intended action (closure of benefits) was to occur **after** the triage, which was held *within* the negative action period, and **after** a good cause determination was made, all in accordance with policy.

The ALJ reversed the Department finding it

"improperly closed Claimant's case when it mailed both the Notice of Noncompliance (DHS-2444) and the Notice of Case Action (DHS-1605) at the same time."

As discussed above, policy specifically allows for this. Accordingly, it is found that the ALJ misapplied policy when he reversed the Department on these grounds.

The Department requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A (January 2013), p. 1. A Work Eligible Individual (“WEI”) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p. 1. Depending on the case situation, penalties include a delay in eligibility at application; case closure for a minimum of three months for the first episode of non-compliance, six months for the second episode; and lifetime closure for the third episode of non-compliance. BEM 233A, pp. 1, 6. As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A, p. 1. 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, pp. 3.

WF/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, p. 7. 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, pp. 8, 9.

At intake, redetermination, or anytime during an ongoing benefit period, when an individual claims to be disabled, or indicates an inability to participate in WF/JET program for more than 90 days due to a physical or mental impairment, the client must provide verification of the disability. BEM 230A (January 2013), p. 10. During this process, Claimant is deferred from WF/JET participation under the status of “establishing incapacity.” BEM 230A, p. 10. Once requested verifications are received, the Department forwards the information to the Medical Review Team (“MRT”) for a determination of whether Claimant is able, or unable, to participate in work-related activities. BEM 230A, pp. 10, 11.

In this case, Claimant alleged he was disabled and not able to participate in work-related activities. In accordance with policy, the Department sent Claimant’s medical packet to the MRT for a determination of whether or not Claimant was able to perform any type of work. The MRT denied the deferral on August 3, 2013. Based on this determination, the Department sent a Work Participation Program Appointment Notice (“Appointment Notice”) to Claimant notifying him to report to the WF/JET program on September 11, 2012. This Notice was not returned as undeliverable by the United States Postmaster. Claimant failed to attend the WF/JET program.

On September 24, 2012, a Notice of Non-compliance was sent to Claimant notifying him of an October 4, 2012, triage date. Prior to the triage, the Department received an unsigned progress note on behalf of Claimant. The note did not provide any new information that would have required the Department to send it to the MRT for consideration. At the telephone triage, because no new evidence was provided and

because the Appointment Notice and other Notices were properly address and not returned as undeliverable, the Department found good cause was not established.

Ultimately, the Department established it acted in accordance with Department policy when it terminated the Claimant's FIP benefits effective November 1, 2012, based on a finding of WF/JET non-compliance without good cause.

DECISION AND ORDER

The Supervising Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Administrative Law Judge erred in reversing the Department's actions based on the mailing of the Notice of Case Action and Notice of Non-compliance on the same date.

Accordingly, it is ORDERED:

1. The Hearing Decision mailed on December 20, 2012 is VACATED.
2. The Department's termination of FIP benefits is AFFIRMED.
3. The imposition of the 3-month FIP sanction is imposed.

Colleen M. Mamelka

Colleen M. Mamelka
Supervising Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: November 7, 2013

Date Mailed: November 7, 2013

NOTICE: The law provides that within 30 days of receipt of this decision, the claimant may appeal this decision to the circuit court for the county in which he/she lives.

CMM/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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