

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

IN THE MATTER OF:



Reg. No.: 201328748
REHD/RECON
Issue No.: 1038, 3029
Case No.: [REDACTED]
Hearing Date: January 16, 2013
County: Wayne (18)

SUPERVISING ADMINISTRATIVE LAW JUDGE: Kathleen H. Svoboda

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the Department of Human Services' (the Department) timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge at the conclusion of the hearing conducted on January 16, 2013 and mailed on January 22, 2013.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, 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 or programs at issue, 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 Rehearing/Reconsideration was generated October 29, 2013.

ISSUE

Whether the Administrative Law Judge (ALJ) erred in reversing the Department's determination which terminated Claimant's Family Independence Program (FIP) benefits and reduced Claimant's benefits under the Food Assistance Program (FAP) based on Claimant's failure to participate in employment related activities.

FINDINGS OF FACT

Upon a review of the entire hearing record, including the recorded testimony and evidence admitted, in addition to a review of the applicable law and policy governing the

issues in this matter, this Administrative Law Manager makes the following findings of fact:

1. Claimant was an ongoing recipient of FIP and FAP benefits and was required to participate in employment related activities.
2. On October 19, 2012, the Department sent Claimant a Notice of Noncompliance advising Claimant that she failed to participate in employment related activities and further advising Claimant of a triage scheduled for October 25, 2012.
3. On the same date of October 19, 2012, the Department sent Claimant a Notice of Case Action advising that Claimant's FIP case would close effective November 1, 2013, and Claimant's monthly FAP allotment would decrease as a result of her failure to participate in employment-related activities without good cause.
4. On November 5, 2013 Claimant requested a hearing protesting the Department's actions.

CONCLUSIONS OF LAW

In the instant case, the Department's Request for Rehearing/Reconsideration alleges that the ALJ misapplied Department of Human Services 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 (October 2012), p. 7. Good cause relates to the reasons why the claimant did not participate in the required work related activities, and is not related to reasons for participation on the triage, and further, 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.

As noted, policy provides that a triage must be held within the negative action period (thus a Notice of Case Action issued) and a good cause determination must be made prior to the negative action date (i.e. closure of benefits). In other words, a good cause determination must be made prior to the effective date of the action to be taken. Good cause is determined **during** triage. BEM 233A, p. 7.

BEM 233A further provides for the notice of noncooperation to be processed simultaneously with the placement of the claimant into triage activity. The DHS-2444, Notice of Employment And/Or Self-Sufficiency Related Noncompliance is sent to the claimant. 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 (October 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; and explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is request. BEM 220, pp. 1, 2; BAM 600 (October 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.

In the instant case, the notice provides that the FIP case is being closed and FAP benefits reduced effective November 1, 2012 for failure to participate in employment and/or self-sufficiency related activities without good cause. This is in fact the accurate articulation of the reason for closure. While the closure would not occur if good cause is determined to exist at the triage pursuant to BEM 233A, the fact remains that Claimant's failure to comply with work related activities gives rise to the anticipated closure of her FIP case and reduced FAP benefits as advised through the Notice of Case Action.

The two notices work together and the fact that the Notice of Case Action is sent at the same time as the Notice of Noncompliance does not render either notice defective. The triage for Claimant was scheduled and the case would not be closed prior to the occurrence of the triage at which time good cause would be determined. Thus, the Department, pursuant to the notices, would not be able to close Claimant's case without following the proper procedure that included conducting the triage and making a good cause determination related to Claimant's alleged failure to comply with the work requirements.

The ALJ failed to read these policy provisions in conjunction with each other and erroneously concluded that the Notice of Case Action could not be sent before the triage occurred per the Notice of Noncompliance. This reading of policy is incorrect. The ALJ reversed the Department finding that:

"The Notice of Case Action was issued for the reason that Claimant failed to comply with employment-related activities without good cause, yet that

conclusion could not have been properly reached prior to the triage to determine good cause, which triage occurred after the Notice of Case Action was issued.”

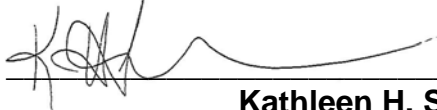
In fact Claimant was indeed noncompliant, but this noncompliance could be excused if good cause is determined at the triage. This is the purpose of the triage. As discussed herein, policy specifically allows for the Notice of Case Action to be issued when the Department seeks to take action on a case. The action proposed by the Department is an action to be taken in the future. Pending this action, the triage is scheduled and conducted in accordance with policy. In the instant case, Claimant was advised of her triage date which was scheduled for October 25, 2012 by means of the Notice of Noncompliance dated October 19, 2012. The Notice of Case Action dated October 19, 2012 advised that Claimant’s FIP case would close and her FAP benefits would be reduced as of November 1, 2012, which was a full 7 days after the triage was scheduled. In the event good cause was found at the triage, Claimant’s case would not close. In the event good cause was not found at the triage, the notice was advising Claimant that her case would close as of November 1, 2012.

Ultimately, the Department established that it acted in accordance with Department policy when it terminated Claimant’s FIP benefits and reduced Claimant’s FAP benefits effective November 1, 2012 based on a finding of noncompliance with work-related activities without good cause.

DECISION AND ORDER

The Administrative Law Manager, based on the above findings of fact and conclusions of law, finds that the Administrative Law Judge erred in reversing the Department’s determination.

Accordingly, it is ordered that the January 16, 2013, decision of the Administrative Law Judge generated at the conclusion of the, hearing and mailed on January 22, 2013, is **REVERSED** and the action taken by the Department is **UPHELD**.



Kathleen H. Svoboda
Supervising Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 19, 2013

Date Mailed: December 20, 2013

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NOTICE: The law provides that within 30 days of receipt of the above Reconsideration Decision and Order, the claimant may appeal it to the circuit court for the county in which he/she lives.

KHS/aca

cc:

