

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-12418
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: January 17, 2013
County: Wayne (82-35)

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 January 17, 2013, 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 correctly impose a negative case action and three-month sanction upon Claimant for non-compliance with work-related activities?

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 Family Independence Program (FIP) benefits recipient in Wayne County.
2. Claimant was a mandatory attendee of the Jobs, Education and Training (JET) program.
3. On October 25, 2012, Claimant was referred to triage for failing to comply with JET standards.
4. On October 25, 2012, Claimant was sent a notice of noncompliance for allegedly failing to attend the JET program on October 23, 2012.

5. The notice scheduled a triage for November 1, 2012.
6. Claimant was sent a notice of case action on October 25, 2012, that notified Claimant that she had failed to participate in work-related activities without good cause.
7. This is the notice of case action that closed claimant's FIP benefit case.
8. A triage was later held on November 1, 2012, and Claimant was found to have no good cause for leaving JET.
9. Claimant did not attend the triage.
10. Claimant's case was sanctioned and closed on December 1, 2012, based on the notice of case action sent October 25, 2012.
11. This is Claimant's first alleged incident of noncompliance.
12. On November 16, 2012, Claimant filed a request for hearing, alleging that she disagreed with the actions of the Department.

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 Jobs, Education and Training (JET) Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. These clients 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, 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, for the first occurrence of noncompliance on the FIP case, the client can be excused. 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. If a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. 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 must be considered, even if the client does not attend. 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.

After long consideration, the Administrative Law Judge finds that questions of good cause, proper triages, and sanctions to be unripe for consideration. The main determining factor in this case is the fact that the Notice of Case Action, which closed and sanctioned the case for non-participation without good cause, was sent out before the triage was held.

Clients have a right to contest a Department decision. BAM 600, p. 1 (2012). As such, when this decision is adjudicated, the Administrative Law Judge can only adjudicate the contested decision; anything that happens after that decision is made is irrelevant to the decision that is contested. Logically speaking, the Department cannot make a decision, and then proceed to take actions that would materially affect the making of that decision.

Therefore, while a triage was held in this case, the triage and the notice of noncompliance scheduling a triage were sent out after the Department had already taken a case action that could be contested. The Administrative Law Judge can only concern himself with the facts of the case that led to a Department case action and nothing that occurred after that action; any events post-case action cannot retroactively be used to justify that case action. In other words, the Administrative Law Judge takes the case action as it stood on the date the action was made.

In the current case, the Notice of Case Action specifically states that Claimant's FIP benefits were being closed because Claimant had been found non-participatory without good cause. However, as Claimant did not have a triage until November 1, 2012, Claimant could not have been found without good cause at the time the case action was made in this case; any good cause determination cannot be made until the triage. In short, when the Department issued a notice saying that Claimant was noncompliant, no triage had been conducted to determine noncompliance. The action Claimant was contesting, the action of October 25, 2012, was an action that was made without triage. Holding the triage after the action was made in no way changes the fact that the initial case action was made without a triage, in violation of policy found in BEM 233A.

Therefore, as the initial case action was made without benefit of a triage, the undersigned must hold that, legally speaking, the Department failed to hold a triage and must be reversed.

However, it should be noted that even if the triage in this case could be said to have legitimately occurred, the triage was still improper. No triage was needed in this case, as the Department has failed to present evidence that shows Claimant failed to attend the JET program. The Department has presented one piece of evidence, the notice of noncompliance, to show that Claimant failed to attend JET; however, this is the piece of evidence that alleges Claimant was noncompliant. A document cannot be used to

prove itself; a finding of non-participation requires some supporting documentation to show that Claimant failed to appear. The Administrative Law Judge cannot simply rely on the Department's unsubstantiated allegations—the DHS-2444—to find actual non-participation. Therefore, as there is no evidence that Claimant was non-participatory, the undersigned cannot hold that a triage was even necessary in the first place.

Therefore, as there is no evidence Claimant failed to attend the JET program, the Administrative Law Judge holds that the Department was in error when it closed Claimant's case for being noncompliant with work-related activities.

DECISION AND ORDER

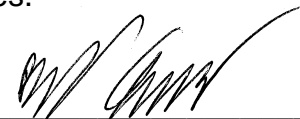
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

- did act properly when it .
- did not act properly when finding Claimant noncompliant with work-related activities.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED 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. The Department is ORDERED to remove any negative actions, sanctions, and penalties currently levied upon Claimant's case with regard to the above matter, and issue any supplemental benefits to which Claimant is otherwise entitled.
2. Claimant is to be rescheduled for all appropriate JET activities.



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

Date Signed: February 5, 2013

Date Mailed: February 5, 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.

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:

