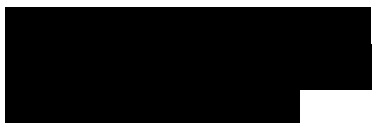


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg.No. 2013 12935
Issue No. 1038,
Case No. [REDACTED]
Hearing Date: January 17, 2013
Wayne County DHS (31)

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, a telephone hearing was held on January 17, 2013. The claimant appeared and testified. [REDACTED], FIS, and [REDACTED] FIS, appeared on behalf of the Department.

ISSUE

Whether the Department correctly sanctioned and closed the Claimant's cash assistance (FIP) for non-compliance 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 an ongoing recipient of FIP benefits.
2. The Claimant was assigned to attend Work First on 7/19/12.
3. The Claimant appeared for orientation but did not stay due to lack of day care.
4. The Department sent the Claimant a Notice of Non-Compliance on 6/27/12 indicating that the Claimant did not meet her participation requirements on 6/03/12. Exhibit 2
5. The Notice of Non-Compliance scheduled a triage for 7/5/12.
6. The Claimant's FIP grant was only \$38 and the Department was aware Claimant was working. The Claimant did not attend the triage.

7. The Claimant testified that she was working for [REDACTED] 40 hours per week.
8. The Department did not provide any details of the triage.
9. On 8/1/12 the Department closed the Claimant's FIP case and imposed a 3-month sanction for non-compliance with Work First participation without good cause. The Notice of Case Action was dated 7/6/12.
10. No Department representative or Work First representative that attended the triage attended the hearing.
11. The Claimant requested a hearing on 10/16/12 protesting the closure of her FIP cash assistance case.

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 and second occurrences of non-compliance result 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. 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. BEM 233a provides direction to the Department as follows when determining good cause:

Determine good cause 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 DHS or the work participation program.

In this case, the Claimant credibly testified that she reported to the Department that she was working 40 hours per week at the time she was assigned to attend the Work First program. She testified that she advised her worker that she could not attend the orientation on 5/29/12 as she was scheduled to work. Her worker did not respond to the Claimant. The Claimant also credibly testified that she provided check stubs to the Department and her caseworker. The Department did not have the Claimant's case file at the hearing. The Claimant did not attend the triage because she did not receive the Notice of Non-Compliance until after the triage.

Because the Claimant's testimony was credible and no testimony to the contrary was provided by the Department, the Department did not establish a basis for non-compliance with the Work First and a basis for the imposition of the sanction.

Therefore it is determined that the Department did not meet its burden of proof that it properly closed the Claimant's FIP case for failure to participate in Work First activities in accordance with Department policy. On the basis of this testimony it is found that there was no basis for the sanction that was imposed.

No one from the Work First program or Department who attended the triage attended the hearing and thus Claimant's credible testimony was un rebutted.

After reviewing the documents submitted at the hearing and the testimony of the parties provided under oath, it is determined that the Department did not meet its burden of proof to demonstrate that it correctly determined that the Claimant failed in her Work First participation requirements or failed to demonstrate a basis for the finding of no good cause was established.

Based on the above Findings of Fact and Conclusions of Law and the testimony of witnesses and the documentary evidence admitted, the Department has not

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demonstrated that it correctly followed and applied Department policy in closing and sanctioning the Claimant's FIP case for non-compliance without good cause and imposing a 3 month sanction. BEM 233A.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department incorrectly closed the Claimant's cash assistance FIP case, and improperly imposed a 3 month sanction on closing the Claimant's case for non-compliance with work-related activities for non-participation with the Work First program. Accordingly, the Department's determination is REVERSED.

Accordingly it is ordered:

1. The Department shall initiate reinstatement of the Claimant's FIP case retroactive to the date of closure (8/1/12).
2. The Department shall supplement the Claimant for FIP benefits, if any, she was otherwise entitled to receive in accordance with Department policy.
3. The Department shall remove from its records and the Claimant's case file the 3 month sanction it imposed on the Claimant for non-compliance with work-related activities.


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

Date Signed: January 25, 2013

Date Mailed: January 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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

