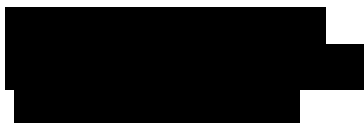


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg.No. 2013-1482
Issue No. 1038, 5026
Case No. [REDACTED]
Hearing Date: December 5, 2012
Wayne County DHS (41)

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 December 5, 2012. The Claimant appeared and testified. [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?

Whether the Department properly processed the Claimant's SER application for rent assistance?

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 assigned to attend the Work First program and attended on August 1, 2012 and did not return thereafter.
2. The Claimant did not meet her participation requirements due to her absence from the Work First Program.
3. The Department sent a notice of non compliance to the Claimant on September 14, 2012. The Notice scheduled a triage for September 20, 2012. The Notice

- indicated the non compliance due to failure to participate in the Jet program as required. Exhibit 1.
4. The Notice of Non Compliance was sent to the Claimant at her correct address which she had provided to the Department.
 5. The Claimant did not have problems receiving her mail but did not retrieve the mail from the address listed which was her cousin's until a week after the triage. Claimant Exhibit 1
 6. The Claimant did not attend the triage.
 7. The Department held a triage and found that there was no good cause for the Claimant's failure to attend Work First and that her attendance did not meet participation requirements.
 8. The Department sanctioned and closed the Claimant's FIP case for 6 months and removed Claimant from the Food Assistance group effective October 1, 2012 pursuant to Notice of Case Action dated September 14, 2012.
 9. The Claimant applied for SER to avoid an eviction. The Department denied the SER application on September 18, 2012. Exhibit 3
 10. The Department denied the Claimant's SER application on September 18, 2012 indicating that the total of the income asset copayment shortfall and contribution is equal to or greater than the amount needed to resolve the emergency. Exhibit 3
 11. The Claimant requested a hearing on September 20, 2012 protesting the closure of her FIP cash assistance and the denial of her SER application for rent/moving assistance.

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 second occurrence of non-compliance results in a 6 month FIP closure. BEM 233A The third occurrence results in a lifetime disqualification from receiving FIP benefits.

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.

In this case, the Claimant was assigned to attend Work First and after orientation did not return to the program. The Claimant did not advise the Work First program of any problem she was having attending the program and did not reach her case worker or the Work First program personnel to report that she was living in Ann Arbor. Exhibit 3. At the hearing the Claimant said that she did not receive the Notice of Non Compliance until after the triage. After reviewing Claimant Exhibit 1, it is determined that the reason she did not receive the Notice is that she neglected her responsibility to retrieve her mail from her cousin and that her cousin was unreliable in assisting the Claimant with collecting her mail.

The claimant testified that she did not receive the Notice of Non Compliance, however the Notice was sent and addressed to the correct address. Exhibit 1. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be

rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). The Claimant, when asked by the undersigned regarding problems with her mail, indicated that she had not retrieved the mail from her cousin's and that her cousin did not have the Claimant's phone number. Claimant Exhibit 1. The Claimant's testimony did not establish any evidence to rebut the presumption of receipt and, therefore, the Notice is presumed to be received.

The evidence presented demonstrated that the Department held a triage which the Claimant did not attend. At the triage the Department determined that the Claimant did not participate in Work First as required; thus, was in non compliance without good cause based upon the information available. Exhibit 3. Thus, the Department correctly found no good cause and instituted closure of the Claimant's FIP case. Unfortunately, the Claimant's inaction with regard to attending Work First, not retrieving her mail and not communicating with either the program or her worker about her circumstance caused the sanction to be properly imposed.

It is determined based upon the evidence presented at the hearing that the Department properly complied with department policy regarding the requirements regarding triages and the finding of no good cause for non compliance with the Work First attendance requirements in support of the imposed sanction. BEM 233A

Based on the above Findings of Fact and Conclusions of Law and for the reasons stated on the record at the hearing, the testimony of witnesses and the documentary evidence received, the Department has 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 removing the Claimant from her FAP group and imposing a 3 month sanction. BEM 233A.

SER Application Denial

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by, 1999 AC, Rule 400.7001 through Rule 400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

Additionally, In this case the Department denied the Claimant's SER application for emergency housing assistance due to income/asset copayment shortfall being equal to or greater than the amount needed to resolve the emergency. Exhibit 3 In its hearing summary the Department indicated that the SER program was denied because the Claimant did not turn in an eviction notice or Judgment notice. On the application for SER the Claimant indicated that she had no unearned income even though at the time

she was still receiving FIP as her FIP case had not closed. The Department produced no evidence that it requested proof of eviction or Judgment from the Claimant and the Department did not check at the time whether the Claimant was receiving FIP income. There also was no budget submitted with the SER Decision Notice to explain the basis in that notice for the denial. Therefore the Department did not meet its burden of proof to establish a basis for the denial of the SER application in accordance for Department policy.

The Claimant also questioned the imposition of a 6 month sanction instead of a 3 month sanction. A sanction record was presented at the hearing which indicated that a first sanction had been previously imposed in 2008 and based upon policy this older sanction was allowed to be counted as a first sanction. Policy allows the Department to count and include sanction beginning April 1, 2007. Department of Human Services Bridges Eligibility Manual, (BEM) 233A pp. 6, (2012).

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 closed the Claimant's FIP case as of October 1, 2012 and properly imposed a 6 month sanction. did not act properly when .


Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record and in this Decision.

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 . did not act properly when it denied the Claimant's SER application.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record and as set forth in this Decision.

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

1. The Department shall re register the Claimant's SER and process the application to determine the Claimant's eligibility for the SER emergency rent and relocation assistance.


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

Date Signed: December 13, 2012

Date Mailed: December 13, 2012

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.

2013-1482/LMF

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

LMF/cl

cc:

