

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

IN THE MATTER OF:



Reg.No. 2013 17608
Issue No. 1038,
Case No. [REDACTED]
Hearing Date: January 14, 2013
Wayne County DHS (35)

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 14, 2013. 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.

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 and a participant of the Work First program and became employed so she no longer attended the program.
2. The Claimant provided a verification of employment to the Work First program as well as check stubs demonstrating her earnings.
3. The Department sent the Claimant a Notice of Non-Compliance on 11/16/12 indicating that the Claimant did not meet her participation requirements on 4/6/12 as she failed to complete a FAST. Exhibit 1
4. The Notice of Non-Compliance scheduled a triage for 11/26/12.

5. The Claimant did not attend the triage as she did not receive the Notice of Non-Compliance as the Department sent the Notice to the wrong address.
6. The Claimant provided the Department with her new address shortly after moving in August 2012 and provided verification of employment and a redetermination with her new address.
7. The Department presented no evidence of the basis for the non-participation and no one from the Department or the Work First program with actual knowledge of the Claimant's alleged non-participation attended the hearing.
8. The Department closed the Claimant's FIP case effective 12/1/12 and imposed a 3-month sanction for non-compliance with Work First participation without good cause.
9. The Claimant requested a hearing on 12/11/12 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 results 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 attended the Work First program and began employment and provided verification of employment to the Work First program and her case worker together with pay stubs and her new address. On the record presented, the Department did not present any evidence of non-participation with work-related activities and the Notice was sent to the wrong address. Thus the Claimant was not given notice of any non-compliance. The Claimant also credibly testified that she did not receive the notice of non-compliance even though the Department was provided her new address.

Lastly, the Notice of Non-Compliance offered by the Department indicated that the Claimant's non-compliance was due to failure to complete a FAST plan.

On the basis of this testimony it is found that there was no basis presented to support the closure of the Claimant's FIP case and the 3-month sanction that was imposed as the Claimant did provide the Department and Work First with verification of employment. Because no one from either the Work First program or the Department with actual knowledge indicated the basis for Claimant's non-compliance, other than general non-participation and no evidence of failure to complete a FAST was presented, or whether an actual triage was held, it is determined that the Department did not meet its burden of proof to show that its decision to find the Claimant in non-compliance with work participation requirement without good cause was correct. The Claimant's testimony was very clear and credible.

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 good cause. The Department did not demonstrate that it followed Department policy regarding finding of good cause at the triage and thus, Department incorrectly found no good cause and instituted closure of the Claimant's FIP case. Further non-completion of a FAST is not a basis to impose a sanction.

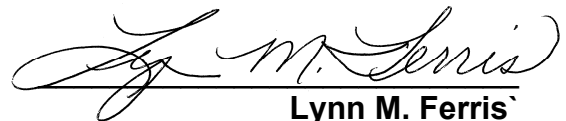
Based on the above Findings of Fact and Conclusions of Law and the testimony of witnesses and the documentary evidence received, the Department has not demonstrated that it correctly followed and applied Department policy in closing and sanctioning the Claimant's FIP case for non-compliance without good 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 (12/1/12).
2. The Department shall supplement the Claimant for any FIP benefits 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 participation requirements.



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

Date Signed: January 23, 2013

Date Mailed: January 23, 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

LMF/cl

cc:

