

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

IN THE MATTER OF:



Reg. No.: 201320915
Issue No.: 1038; 3029
Case No.: [REDACTED]
Hearing Date: March 18, 2013
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 March 18, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included [REDACTED], Family Independence Specialist.

ISSUE

Whether the Department properly closed Claimant's case for Family Independence Program (FIP) benefits and reduced her Food Assistance Program (FAP) benefits based on a failure to participate in employment-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. Claimant and her husband were ongoing recipients of FIP and FAP benefits and were required to participate in employment-related activities.
2. On November 13, 2012, the Department sent Claimant and her husband Work Participation Program Appointment Notices, requiring them each to attend the work participation program orientation on November 27, 2012.
3. Neither Claimant nor her husband attended the November 27, 2012, work participation program orientation.

4. On December 7, 2012, the Department sent Claimant and her husband Notices of Noncompliance scheduling a triage on December 13, 2012.
5. Claimant participated in the triage.
6. The Department held the triage and found that Claimant and her husband had failed to comply with employment-related activities and had no good cause for the noncompliance.
7. On December 7, 2012, the Department sent Claimant a Notice of Case Action notifying her that, effective January 1, 2013, her FIP case would close and her FAP benefits would be reduced based on a failure to participate in employment-related activities without good cause.
8. The Department imposed a first sanction to Claimant's FIP case, closing the case for a three-month minimum.
9. On December 11, 2012, Claimant filed a request for a hearing disputing the Department's action.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), the Department of Human Services Bridges Eligibility Manual (BEM), and the Department of Human Services 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.

In a December 7, 2012 Notice of Case Action, the Department notified Claimant that, effective January 1, 2013, because of noncompliance with employment-related activities, her FIP case would close for a three-month minimum and her FAP benefits would be reduced as a result of a decrease in her FAP group size from four to three.

Closure of FIP Case

As a condition of continued FIP eligibility, work eligible individuals (WEIs) seeking FIP are required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (November 1, 2012), p 1; BEM 233A (November 1, 2012), p 1. A client's failure to attend or participate in a work participation program or other employment service provider without good cause constitutes a noncompliance with employment or self-sufficiency related activities. BEM 233A, pp 1-2.

In this case, Claimant acknowledged at the hearing that she and her husband received the Work Participation Program Appointment Notices requiring them to attend the work participation program orientation on November 13, 2012, but neither of them attended the orientation. Therefore, both Claimant and her husband failed to comply with the work participation program. However, the Department must schedule a triage meeting with the client to jointly discuss noncompliance and good cause before terminating a client from the work participation program and closing her FIP case. BEM 233A, p 7.

Claimant's Good Cause Explanation

In this case, Claimant attended the triage, and she testified that she explained at the triage that she did not attend the November 13, 2012 orientation because she had a final exam that same day. Claimant testified that she tried to attend the orientation the next day, on November 14, 2013, but was denied entry. The Appointment Notice advises clients to call their workers *before* the appointment date to reschedule an appointment if they are unable to attend on the scheduled date. Claimant admitted that she did not call her worker before November 14, 2013 to reschedule the orientation. See BEM 230A, p 4. Furthermore, because Claimant had prior knowledge that the orientation was scheduled on the same day as her finals, her finals did not constitute an unplanned event that could substantiate a good cause explanation. See BEM 233A, p 5. Under these facts, the Department acted in accordance with Department policy when it concluded that Claimant did not have good cause for her noncompliance.

Claimant's Husband's Good Cause Explanation

Claimant also testified that, with respect to her husband's failure to attend the orientation, she explained at the triage that he had heart disease and was unable to work. If at anytime during an ongoing benefit period an individual claims to be disabled or indicates an inability to participate in work or a work participation program for more than 90 days because of a mental or physical condition, the Department must defer the individual while a determination is made as to whether the individual is eligible for a deferral from participation. BEM 230A, p 9. In this case, the Department did not take any action to request verification of Claimant's husband's disability. BEM 230A, p 10. The Department worker at the hearing did not participate in the triage and could not counter Claimant's credible testimony that she advised the Department of her husband's disability prior to the FIP case closure. Furthermore, because the documentation concerning the husband's triage did not reference the correct triage date, it was not helpful in establishing the evidence presented at the triage. Under the facts in this case, the Department did not act in accordance with Department policy to the extent it concluded, without first seeking verification of the alleged disability, that

Claimant's husband did not have good cause for his noncompliance and closed the group's FIP case based on his noncompliance without good cause.

Sanctions Applied

Because the Department properly concluded that Claimant did not have good cause for her noncompliance, the Department acted in accordance with Department policy when it closed Claimant's FIP case and applied the three-month sanction applicable to the first-time occurrence of noncompliance. BEM 233A, pp 1, 6. However, the Department applies noncooperation penalties at an individual level. BEM 233A, p 7. Only Claimant is subject to a sanction in this case, and it is unclear from the December 7, 2012 Notice of Case Action and the Department's testimony at the hearing that the Department applied the FIP sanction only to Claimant's record. Thus, the Department has failed to satisfy its burden of showing that it complied with Department policy with respect to identifying the individual to whom it applied the FIP noncompliance sanction.

Reduction in FAP Benefits

Because Claimant's FIP case was properly closed based on Claimant's noncompliance with employment-related activities without good cause, Claimant is a disqualified member of her FAP group. BEM 230A, p 1; BEM 233B (December 1, 2011), p 5; BEM 212 (April 1, 2012), p 7. As a result, she is excluded from her FAP group size during the FAP disqualification period and her group's FAP benefits would be those applicable to a group size of three (Claimant's husband and two children). BEM 212 (November 1, 2012), p 7.

In this case, although the December 7, 2012, Notice of Case Action indicates that Claimant's FAP group size was reduced to three, it states that Claimant's husband is the disqualified group member. Therefore, while the Department properly reduced Claimant's FAP benefits by disqualifying one of the group members because of the FIP noncompliance, it improperly identified Claimant's husband, rather than Claimant, as the individual subject to the disqualification. Thus, the Department acted in accordance with Department policy when it reduced Claimant's FAP benefits, but not when it applied the FAP sanction to Claimant's husband's record.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department properly closed Claimant's FIP case and reduced the FAP group's FAP benefits but improperly sanctioned the parties.


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 properly closed Claimant's FIP case and reduced the FAP group's FAP benefits but improperly sanctioned the parties.

Accordingly, for the reasons stated above and on the record, the Department's decision is AFFIRMED REVERSED AFFIRMED IN PART with respect to closure of Claimant's FIP case and reduction of FAP benefits AND REVERSED IN PART with respect to application of the sanctions.

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

1. Remove the FIP noncompliance sanction applied on or about January 1, 2013 from Claimant's husband's record;
2. Confirm that a first FIP noncompliance sanction was applied to Claimant's record on or about January 1, 2013 ;
3. Remove the FAP sanction applied on or about January 1, 2013 from Claimant's husband's record; and
4. Apply a first FAP sanction beginning January 1, 2013 to Claimant's record.



Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 3/25/2013

Date Mailed: 3/25/2013

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)

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

ACE/hw

cc:

