

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

IN THE MATTER OF:



Reg.No. 2013 32594
Issue No. 1038,
Case No. [REDACTED]
Hearing Date: April 3, 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 April 3, 2013 from Detroit, Michigan. 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 participant of the Work First program and was an ongoing recipient of FIP benefits.
2. The Department sent the Claimant a Notice of Non-Compliance on November 19, 2012 indicating that the Claimant did not meet her participation requirements on November 19, 2012.
3. The Notice of Non-Compliance scheduled a triage for November 28, 2012.
4. The Claimant did not attend the triage. The Claimant did not receive the Notice of Non-Compliance. At the triage the Department found no good cause.

2013 32594 /LMF

5. No Department or Work First individual that attended the triage was available for the hearing.
6. The Claimant provided the Department a medical needs form in November 2012 advising the Department that her son, who suffers from seizures, had to attend physical therapy.
7. On December 1, 2012 the Department closed the Claimant's FIP case and imposed a 3 month sanction for non-compliance with Work First participation without good cause. Exhibit 9
8. No Department representative or Work First representative that attended the triage attended the hearing.
9. The Non-compliance Warning Notice was not signed or addressed to the Claimant.
10. The Claimant requested a hearing on January 2, 2013 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 non-compliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the non-compliant 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 non-compliance 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 non-compliance 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 non-compliance 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 was attending Work First and presented a medical needs form to the Department in November 2012 regarding her son who required physical therapy due to seizures causing her to miss Work First. Claimant did not receive her Notice of Non-Compliance and thus did not attend the triage. No one from the Department or Work First was available to attend the hearing. It is unclear from the record presented whether a triage was held and whether non-compliance was found and the basis for non-compliance. Additionally the Department did not have the case file. The only evidence admitted in the case record was the Notice of Non-Compliance. The Claimant credibly testified that she provided several medical needs forms to the Department prior to November 2012 and after. The Claimant's testimony was credible and 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.

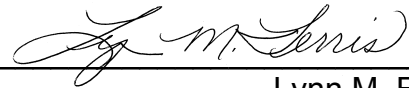
The Department did not demonstrate that it followed Department policy regarding finding of good cause at the triage as well as it did not process or consider the medical needs form and therefore it is determined that the Department incorrectly found no good cause and instituted closure of the Claimant's FIP case.

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 6 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, 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: April 10, 2013

Date Mailed: April 10, 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:

2013 32594 /LMF

- 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

LMF/cl

cc:

