

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-42333
Issue Nos.: 1021, 3000, 6043
Case No.: [REDACTED]
Hearing Date: May 20, 2013
County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 May 20, 2013, from Detroit, Michigan. Claimant appeared and testified. Participating on behalf of the Department of Human Services (Department) was [REDACTED]

ISSUE

Did the Department act in accordance with Department policy when it processed Claimant's cases for Family Independence Program (FIP), Child Development and Care (CDC) and Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing recipient of FIP, CDC and FAP benefits.
2. On March 21, 2013, the Department sent Claimant a Notice of Noncompliance instructing her to attend a triage appointment on March 28, 2013, to discuss whether good cause existed for the noncompliance. Exhibit 1.
3. On March 21, 2013, the Department sent Claimant a Notice of Case Action informing her that the Department intended to terminate her FIP benefits effective May 1, 2013, for failure to participate in employment and/or self sufficiency-related activities without good cause. Exhibit 3.

4. Claimant appeared at the triage meeting held on March 28, 2013, during which the Department determined that Claimant had not established good cause for the noncompliance.
5. On March 28, 2013, Claimant signed a letter requesting that the Department close her FIP case because she had gained employment and no longer needed FIP assistance. Exhibit 9.
6. On March 28, 2013, the Department sent Claimant a Verification of Employment form that was to be completed and returned to the Department by April 8, 2013. Exhibit 2.
7. As a result of Claimant's gained employment, her eligibility for FAP and CDC benefits was reviewed.
8. On April 3, 2013, the Department sent Claimant a Notice of Case Action informing her that the Department intended to close her FAP case effective May 1, 2013, due to excess income. Exhibit C.
9. On April 23, 2013, the Department sent Claimant a Notice of Case Action informing her that the Department intended to close her CDC case effective May 5, 2013, due to excess income. Exhibit B.
10. Claimant's FIP case closed effective May 1, 2013, for failure to participate in employment and/or self sufficiency-related activities without good cause and a three-month sanction was imposed.
11. On April 22, 2013, Claimant filed a request for hearing disputing the Department's actions.

CONCLUSIONS OF LAW

Department policies are found in the Department of Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and State Emergency Relief Manual (ERM).

Additionally, Claimant requested a hearing on April 22, 2013, to dispute actions taken by the Department with respect to her FAP and CDC cases. Soon after commencement of the hearing, it was determined that Claimant's FIP case was closed due to noncompliance with work-related activities without good cause and a three-month sanction was imposed. The Department testified that the closure of Claimant's FIP case directly impacted her CDC case and, although Claimant did not request a hearing with respect to the closure of her FIP case, it was addressed at the hearing. Each program will be discussed separately.

FIP

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.

As a condition of FIP eligibility, all Work Eligible Individuals (WEIs) must engage in employment and/or self-sufficiency-related activities. BEM 233A (January 2013), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider, failing or refusing to appear for a scheduled appointment or meeting related to assigned activities, and failing or refusing to participate in employment and/or self-sufficiency-related activities. BEM 233A, pp. 1, 2.

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, pp. 3, 4. Good cause can include the client being employed for 40 hours/week, among other things. BEM 233A, p. 4. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p. 1. Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 8. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 6.

In this case, Claimant was an ongoing recipient of FIP benefits. As a condition of receiving FIP benefits, Claimant was required to participate in a work participation program. At the hearing, the Department testified that because Claimant missed an appointment on March 14, 2013, which she was required to attend, the Department sent Claimant a Notice of Noncompliance on March 21, 2013, instructing her to attend a triage appointment on March 28, 2013, to discuss whether good cause existed for the noncompliance. Exhibit 1. Also on March 21, 2013, the Department sent Claimant a Notice of Case Action informing her that the Department intended to terminate her FIP benefits effective May 1, 2013, for failure to participate in employment and/or self-sufficiency-related activities without good cause. Exhibit 3. BEM 233A, pp. 8-9;BAM 220 (November 2012), p. 9.

Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 7. A triage must be conducted and good cause must be considered even if the client does not attend. BEM 233A, pp. 7-8.

Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 7.

A triage was conducted on March 28, 2013, at which Claimant appeared. At the hearing, the Department testified that, at the triage, Claimant failed to identify any barriers to her participation in work-related activities and the Department determined that she did not have good cause for the noncompliance and subsequently closed her FIP case effective May 1, 2013, and imposed a three-month sanction. Exhibits 2 and 3. The Department further testified that they did not become aware that Claimant was employed until April 2, 2013, when the completed verification of employment was received by the Department and Claimant turned in her pay stubs. The notes written on the triage outcome sheet presented at the hearing, together with the verification of employment that the Department sent Claimant on March 28, 2013, and Claimant's credible testimony do not support the Department's contention, however.

Claimant testified that she attended the triage meeting on March 28, 2013, and informed the Department that she had gained employment on March 11, 2013. Claimant stated that she did not attend the work participation program because she was at work that day. Claimant further testified that she signed a blank triage outcome sheet, that she does not read English well and that there was no translator present at her triage meeting. Additionally, at the triage, Claimant requested that the Department close her FIP case as she was now employed and no longer needed FIP assistance. Exhibit 9. Claimant clearly identified to the Department at the triage that she had gained employment, which is evidenced by the verification of employment form that was sent to her the same day as the triage. When Claimant established good cause for her noncompliance, the Department should have processed the FIP case closure based on her written request, as opposed to closing it based on noncompliance without good cause and imposing a sanction. Therefore, because Claimant established that she was employed at the triage, the Department did not act in accordance with Department policy when it closed Claimant's FIP case for noncompliance without good cause and imposed a three-month sanction, rather than closing Claimant's FIP case per her request.

FAP

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, Rule 400.3001-3015.

The law provides that disposition may be made of a contested case by stipulation or agreed settlement. MCL 24.278(2).

In the present case, Claimant was an ongoing recipient of FAP benefits. Claimant informed the Department that she had gained employment and, as a result, the

Department sent Claimant a verification of employment form that Claimant completed and submitted to the Department along with her recent pay stubs. The Department recalculated Claimant's FAP benefit eligibility and determined that she had excess income, making her ineligible to receive FAP benefits. On April 3, 2013, the Department sent Claimant a Notice of Case Action informing her that the Department intended to close her FAP case effective May 1, 2013, due to excess income. Exhibit C.

At the hearing, the Department acknowledged that it made certain errors in calculating Claimant's unearned income and that it had considered some unearned income that it should not have. A further review of the evidence establishes that certain errors may have been made with respect to the calculation of Claimant's earned income as well. Claimant is employed at a nail salon where she is paid 60% of the total amount of money she earns for the salon. The completed verification of employment and the pay stubs provided support Claimant's testimony that the gross income amount she receives per pay period is not the total amount of sales that is on the pay stubs. Exhibits 2 and 8. According to the pay stubs, for the period of March 1, 2013, to March 15, 2013, Claimant made \$424.00 in total sales for the salon, but her gross income for that period was only \$254.50. For the period of March 16, 2013, to March 31, 2013, Claimant made \$1,722.00 in total sales for the salon, but her gross income for the period was only \$1,033.20. Exhibit 8. The Department testified that it used the total amount of sales made for the salon as Claimant's gross income per period when it prospectively budgeted Claimant's monthly earned income for FAP purposes, which was not proper. BEM 505 (October 2010), pp. 1-7. Because Claimant is paid twice a month, the Department is to add the income amounts received to get her monthly income. BEM 505, p. 6.

Soon after commencement of the hearing, the parties testified that they had reached a settlement concerning the disputed action. Consequently, the Department agreed to do the following: (i) reinstate Claimant's FAP case effective May 1, 2013, in accordance with Department policy; (ii) begin recalculating the FAP budget for May 1, 2013, ongoing in accordance with Department policy and consistent with this Hearing Decision, taking into account the errors in the calculation of earned and unearned income; (iii) begin issuing supplements to Claimant for any FAP benefits that she was entitled to receive but did not from May 1, 2013, ongoing in accordance with Department policy; and (iv) notify Claimant of its decision in writing in accordance with Department policy.

As a result of this settlement, Claimant no longer wishes to proceed with the hearing. As such, it is unnecessary for this Administrative Law Judge to render a decision regarding the facts and issues in this case.

CDC

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The

program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1997 AACS R 400.5001-5015.

Additionally, Claimant requested a hearing to dispute an adverse action taken by the Department with respect to her CDC case. The Department initially testified that the closure of Claimant's FIP case for noncompliance without good cause and the imposition of the three-month sanction directly impacted Claimant's CDC case and triggered a CDC case closure; however, a further review of the evidence does not support the Department's testimony. The Department presented two Notices of Case Action dated March 21, 2013, and April 2, 2013, that indicate Claimant was approved for CDC benefits for the period of April 7, 2013. Exhibits 3 and 5. At the hearing, Claimant presented a Child Development and Care Client Certification/Notice of Authorization that was sent to her on April 23, 2013, which establishes that the Department authorized CDC benefits from March 10, 2013, to April 6, 2013. Exhibit A. There was no eligibility summary provided to show when Claimant received CDC benefits and when her benefits terminated; therefore, there is no information available to determine whether or not Claimant received CDC benefits for the period beginning April 14, 2013, ongoing.

In addition, the Department sent Claimant a Notice of Case Action on April 23, 2013, informing her that the Department intended to close her CDC case effective May 5, 2013, ongoing due to excess income. Exhibit B. The Department did not present any evidence regarding what figures were relied on in making the determination that Claimant was not eligible for CDC from May 5, 2013, ongoing due to excess income. There is insufficient evidence to establish whether or not Claimant received CDC benefits for the period from April 14, 2013, through her case closure on May 5, 2013. Because of the errors discussed above with respect to the calculation of Claimant's income for FAP purposes; the Department has not satisfied its burden in establishing that it acted in accordance with Department policy when it closed Claimant's CDC case effective May 5, 2013, due to excess income.

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 not act in accordance with Department acted policy when it closed Claimant's FIP case due to noncompliance without good cause and imposed a three-month sanction. The Department also did not act in accordance with Department policy when it closed Claimant's CDC case due to excess income. Accordingly, the Department's FIP and CDC decisions are REVERSED.


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

1. Remove the three-month sanction imposed on Claimant's FIP case and process the closure based on Claimant's written request.
2. Reinstate Claimant's CDC case effective April 14, 2013, in accordance with Department policy;
3. Begin redetermination of Claimant's eligibility for CDC benefits effective April 14, 2013, ongoing; and
4. Begin issuing supplements to Claimant's Child Care Provider for any CDC benefits that she was entitled to receive but did not from April 14, 2013, ongoing, if otherwise eligible and qualified.

The Administrative Law Judge further concludes that the Department and Claimant have come to a settlement regarding Claimant's request for a hearing regarding her FAP case.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING:

1. Reinstate Claimant's FAP case effective May 1, 2013, in accordance with Department policy;
2. Begin recalculating the FAP budget for May 1, 2013, ongoing in accordance with Department policy and consistent with this Hearing Decision, taking into account the errors in the calculation of earned and unearned income;
3. Begin issuing supplements to Claimant for any FAP benefits that she was eligible to receive but did not from May 1, 2013, ongoing in accordance with Department policy; and
4. Notify Claimant of its decision in writing in accordance with Department policy.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 28, 2013

Date Mailed: May 28, 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 affect 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

ZB/pf

cc:

