

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

IN THE MATTER OF:

[REDACTED]

Reg.No. 2013-7272
Issue No. 1038
Case No. [REDACTED]
Hearing Date: January 10, 2013
Wayne County DHS (18)

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 10, 2013. The Claimant appeared and testified. [REDACTED], Case Manager, [REDACTED], Jet Coordinator, [REDACTED] ES, and [REDACTED], FIM, appeared on behalf of the Department.

ISSUE

Whether the Department correctly sanctioned and closed the Claimant's cash assistance (FIP) for noncompliance 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 assigned to attend the Work First program and was required to participate in a work program as part of her Work First participation.
2. The Department attempted to verify continuing participation and could not reach the Claimant by phone.
3. A Notice of Non Compliance was sent to the Claimant on 9/7/12 scheduling a triage on 9/13/12.

4. A triage was held and the Department found no good cause. At the triage it was determined that the Claimant had not worked since May and was attending school.
5. The Claimant did not report the ending of her work assignment and did not obtain approval from Work First to attend school as part of her work participation requirements.
6. The Department sent a Notice of Case Action to the Claimant on September 7, 2012 which imposed a sanction closing the Claimant's FIP case for 6 months (second sanction) effective October 1, 2012 due to noncompliance without good cause to participate in Work First activities as required.
7. The Claimant requested a hearing on October 17, 2012 protesting the closure of her FIP cash assistance and imposition of a 6 month closure sanction.

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 occurrence 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. The penalty for noncompliance is FIP closure.

In this case, the Claimant was deemed in noncompliance with Work First requirements for two reasons, failing to re-engage with the program after her work assignment at [REDACTED] ended, and failing to attend the required hours per month. The Claimant did not obtain approval from the Work First program to attend school as part of her participation requirement and did not contact the program about her circumstances until the triage was scheduled.

BEM 233A also provides:

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

Failing or refusing to:

- Appear and participate with the work participation program or other employment service provider.

- Provide legitimate documentation of work participation.

- Appear for a scheduled appointment or meeting related to assigned activities.

- Participate in employment and/or self-sufficiency-related activities.

- Participate in required activity.

In this case the uncontroverted testimony of both parties indicates that the Claimant was unavailable when the Work First program attempted to contact her as her phone was off, and the Claimant stopped her work assignment in May 2012 and did not report back to the Work First program. Although the Claimant thought that because she was attending school she was excused from attending Work First, such was not the case as her school attendance was not an approved Work First participation activity. At the beginning of the program participants are given the rules that must be followed, including reporting when activities end as well as re-engaging with the program. Additionally, school attendance is not an automatic work participation activity and that all such participation is to be approved by the Work First program.

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In this case the list of good cause reasons were reviewed by the undersigned and it was determined based upon the evidence presented at the hearing and the testimony of the parties, that the Claimant did not demonstrate or meet any of the good cause reasons set forth below:

Good Cause includes the following:

Employed 40 Hours

The person is working at least 40 hours per week on average and earning at least state minimum wage.

Client Unfit

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

Illness or Injury

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

Reasonable Accommodation

The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

No Child Care

The client requested child care services from DHS, the work participation program, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

Appropriate. The care is appropriate to the child's age, disabilities and other conditions.

Reasonable distance. The total commuting time to and from work and the child care facility does not exceed three hours per day.

Suitable provider. The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

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Affordable. The child care is provided at the rate of payment or reimbursement offered by DHS.

No Transportation

The client requested transportation services from DHS, the work participation program, or other employment services provider prior to case

closure and reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities . Unplanned events or factors include, but are not limited to, the following:

Domestic violence.

Health or safety risk.

Religion.

Homelessness.

Jail.

Hospitalization.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

Long Commute

Total commuting time exceeds:

Two hours per day, not including time to and from child care facilities **or**

Three hours per day, including time to and from child care facilities.

Department of Human Services Bridges Eligibility Manual (BEM) 230A (January 2013)

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DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. Our focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause. BEM 233A

The Department's evidence demonstrated that it had sufficient non participation with Work First requirements by the Claimant to determine both non compliance by the Claimant for failing to participate and re-engage after her work assignment ended, and failure to seek approval to attend school as a work participation activity. Thus it must be found that the Department correctly closed the Claimant's FIP cash assistance case and imposed a 6 month sanction for noncompliance with work related activities. It is therefore determined that the Department properly applied and followed Department policy in taking its action in this case.

The Claimant can reapply for FIP benefits at the end of the sanction period, but should be aware that a further imposition of a third sanction will result in Claimant's lifetime disqualification from receiving FIP benefits as the sanction imposed in this case was the Claimant's second sanction.

Based on the above Findings of Fact and Conclusions of Law 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 imposing a 6 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 correctly closed the Claimant's cash assistance FIP case and correctly imposed a 6 month sanction on closing the Claimant's case for noncompliance with work related activities. Accordingly, the Department's determination is AFFIRMED.



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

Date Signed: January 17, 2013

Date Mailed: January 17, 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

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cc:

