

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

IN THE MATTER OF:



Reg. No.: 20138248
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: April 11, 2013
County: Wayne County (#35)

ADMINISTRATIVE LAW JUDGE: MICHELLE HOWIE

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 conducted from Detroit, Michigan on Thursday April 11, 2013. The Claimant appeared and testified. Participant on behalf of the Department of Human Services (Department) was [REDACTED] (Family Independence Specialist).

ISSUE

Whether the Department properly closed the Claimant's cash assistance program ("FIP") for non-compliance with employment related activity 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 a FIP recipient that is a mandatory participant in the Work Participation Program.
2. The Claimant identified a mental disability which he asserts prevented him from participating in the work participation program.
3. The Department previously closed Claimant's FIP benefits effective June 1, 2012 for non-compliance with the work participation program.

4. As the result of an ALJ hearing decision issued September 6, 2012 that reversed the action of the Department, the Department reinstated Claimant's benefits as of June 1, 2012.
5. On September 13, 2012, the Department sent Claimant another Work Participation Program Notice scheduling him for an appointment to attend on October 1, 2012.
6. On September 26, 2012, the Department mailed a Medical Determination Verification Checklist requesting the Claimant to return medical documents, which included a Psychological Examination Report (DHS 49-D) and Mental Residual Functional Capacity Assessment (DHS-49-E) due by October 8, 2012. (Exhibits 1 & 2)
7. The Claimant did not return the requested verifications by the due date, nor request an extension.
8. On October 8, 2012, the Department sent Notice of Non-compliance with Employment Related Activities instructing the Claimant to attend triage on October 15, 2012.
9. On this same date, a Notice of Case Action was mailed to the Claimant informing him that his FIP benefits would terminate effective November 1, 2012 for failure to make initial contact with the work participation program.
10. The Claimant did not attend the triage and the Department determined that good cause did not exist for non-compliance.
11. A three month sanction was also imposed for a first offense of non-compliance with employment related activity.
12. On October 18, 2012, the Department received the Claimant's written hearing request disputing the action.

CONCLUSIONS OF LAW

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

The Family Independence Program (FIP) is temporary cash assistance to support a family's movement to self sufficiency. It 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 the Department requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A (December 2011), p. 1. All Work Eligible Individuals (“WEI”), and non-WEIs, are required to work or engage in employment and/or self-sufficiency-related activities to increase their employability and obtain employment. BEM 233A, p. 2. Failure to participate in employment or self-sufficiency-related activities without good cause is penalized. BEM 233A, p. 7. Penalties include a delay in eligibility at application, ineligibility, or case closure for a minimum of 3 months for the first episode of non-compliance, 6 months for the second occurrence, and a lifetime closure for the third episode of non-compliance. BEM 233A, p. 6. 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, p. 3.

An individual who identifies barriers, to include being physically or mental unfit for job activity, may be temporarily deferred from work program participation. BEM 229 (December 2011), p. 1. If the mental or physical illness, limitation, or incapacity is expected to last less than three months and prevents participation the client may be deferred for up to three months. The Department will verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E-Medical Needs, or other written statement from an M.D./D.O. BEM 230A (December 2011), p. 8. If an individual asserts a disability and inability to participate in the work participation program for longer than 90 days the determination is a two step process. The client must fully cooperate with both steps. BEM 230A, p. 10. The client must provide the Department with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in the work participation program as a mandatory participant. BEM 230A, p. 10. Once a disability has been verified as lasting more than 90 days, the Department is required to obtain a Medical Review Team (MRT) decision. BEM 230A, p. 11. The client is required to provide the Department with the required documentation which includes the DHS-49 series of medical documentation needed to define the disability. BEM 230A, p. 11. If the client does not return the requested documentation the case will be placed into closure for failure to provide needed verification. BEM 230A, p. 11. Potentially disabled individuals should not be sent to the work participation program while the Department is waiting for the verification of disability. BEM 230A, p. 11.

Clients must cooperate with the Department in determining initial and ongoing eligibility to include the completion of necessary forms. BAM 105 (September 2012), p. 5. The Department has the responsibility of telling the client what verification is required, how to obtain it, and the due date. BAM 130 (May 2012), p. 1. Verification means documentation or other evidence to establish the accuracy of the client’s verbal or written statements. BAM 130, p. 1. The client must obtain any required verification,

however, the Department must assist if needed and/or requested. BAM 130, p. 3. Clients are allowed 10 calendar days (or other time limit specified in policy) to provide the requested verification. BAM 130, p. 5. A negative action notice is sent when the client indicates a refusal to provide the verification or the time period provided has lapsed and the client has not made a reasonable effort to provide the verifications. BAM 130, p. 5.

In this case, the Claimant was a mandatory work participation program participant. He claimed a mental disability that prevented him from participating in the work participation program for longer than 90 days. As a result, on September 26, 2012, the Department requested psychological medical documentation from the Claimant that was due by October 8, 2012. Claimant testified that he did not feel the requested psychological exam report and mental residual functional capacity assessment forms were necessary documentation for a deferral from the work participation program. In addition, he asserts the Department improperly referred him to attend the work program and issued the non-compliance letter despite knowing he was claiming a mental disability. Evidence indicates that the Department was clearly aware of Claimant's claim of mental disability at the time of his referral to the work participation program. He was referred to the work program prior to the Department requesting the medical documentation. The Claimant had a good cause reason for not attending the work program. Policy however, provides that the Department will close a client's case if requested verifications are not timely submitted or an extension granted. The medical verifications sent to Claimant are required to determine disability capacity beyond 90 days. Here, Claimant failed to return the documentation by the due date or to request an extension. He further indicated that he did not feel the medical documentation was necessary. Notably as of the date of hearing Claimant has still not provided the requested medical documentation. While the evidence does not support a finding of non-compliance with the work participation program, I find the Department did act properly when it closed Claimant's FIP case effective November 1, 2012 for failure to provide necessary verifications. Claimant may reapply for benefits at anytime and provide any requested documentation in accordance with policy.

Accordingly, the Department's action is hereby, Affirmed in part.

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 acted properly when it closed the Claimant's FIP benefits effective November 1, 2012. It did not act properly when it determined the Claimant was non-compliant with the work participation program and imposed a three-month sanction for a first offense of non-compliance effective November 1, 2013.

Accordingly, it is **ORDERED**:

1. The Department shall remove the imposed three-month sanction for non-compliance with employment related activity.

M. Howie

MICHELLE HOWIE
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/22/2013

Date Mailed: 4/22/2013

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

MH/hw

cc:

