

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2010-229

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 28, 2009

Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on October 28, 2009. Claimant was present and testified. Dan Boter, Program Manager, Val Haley, Case Manager, and Carmen Bobadilla, Career Manager Michigan Works/JET, appeared on behalf of the department.

ISSUE

Did the Department of Human Services (department) properly close claimant's Family Assistance Program (FIP) benefits for failure to participate in work related activities?

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 and her spouse were ongoing recipients of FIP benefits.
- (2) Claimant's husband was participating in the JET program through Michigan Works.

(3) On August 19, 2009, the department issued a Notice of Noncompliance for lack of participation in required activities on August 17 and 18, 2009 and a triage meeting was scheduled for August 28, 2009. (department Exhibit 1, pg. 11)

(4) At the triage meeting, claimant's husband signed a First Noncompliance Letter agreeing that he had been noncompliant and further agreed that he would provide check stubs from his employer and return to the JET program on August 31, 2009, completing 35 hours by September 8, 2009. (Department Exhibit 1, pg. 13)

(5) An additional agreement, which was not included in the First Letter of Noncompliance was also reached by the parties. Pursuant to this agreement, if documentation of claimant's school schedule was provided to the Michigan Works, her husband's required participation hours would decrease.

(6) Claimant's husband did participate for 24 hours the week of August 31, 2009 and provide his check stubs.

(7) The claimant's school schedule was not received until after business hours on September 8, 2009. Therefore, Michigan Works did not reduce the required participation hours for her husband and the case was returned to the department for noncompliance on September 9, 2009. (Department Exhibit 1, pg. 15)

(8) On September 14, 2009, the department issued a Notice of Case Action indicating the FIP benefits would close effective October 1, 2009 due to noncompliance. (Department Exhibit 1, pgs. 1-2)

(9) On September 15, 2009, claimant filed a hearing request to contest the FIP determination.

(10) On September 18, 2009, the department issued a Notice of Noncompliance for not meeting the required participation by September 8, 2009 and for failure to submit a FAST by August 13, 2009. (Department Exhibit 1, pg. 21)

(11) A second triage meeting was held on September 25, 2009 and good cause was not found for the noncompliance. (Department Exhibit 1, pg. 23)

(12) Claimant's FIP benefits remained open pending the hearing outcome due to the timely filing of the hearing request.

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) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependant Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference manual (PRM).

The Family Independence Program (FIP) provides temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency-related activities so they can become self-supporting. Federal and State laws require each work eligible individual (WEI) in the FIP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain stable employment. PEM 230A.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) through the Michigan Works Agencies (MWAs). The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. PEM 230 A. A mandatory participant in the JET program who fails without good cause to participate in employment activity must be penalized. PEM Manual Item 233(a). The penalty for the first occurrence of noncompliance in the JET program is a closure for a minimum of three calendar months under the FIP program. PEM Manual Item 233(a). If a customer is found in noncompliance with FIP when they are also a recipient of FAP, their FAP case will also be penalized for a minimum of three months under the JET program. PEM Manual Item 233(b); 42 USC 607. Good cause is a valid reason for noncompliance with employment related activities. A claim of good cause must be verified and documented for applicants, members, and recipients. PEM Manual Item 230(a), PEM Manual Item 230(b); 7 CFR Parts 272 and 273.

In the present case, Claimant and her spouse were ongoing recipients of FIP benefits who were participating in the JET program through Michigan Works. Claimant's husband was found to be in noncompliance with the JET program and a triage meeting was held on August 28, 2009. At the triage meeting, claimant's husband signed a First Noncompliance Letter agreeing that he had been noncompliant and that he would provide check stubs from his employer and would return to the JET program on August 31, 2009, completing 35 hours of participation by September 8, 2009. (Department Exhibit 1, pg. 13)

However, the parties reached an additional agreement, which was not documented on the First Letter of Noncompliance. Pursuant to this agreement, if claimant submitted a copy of her school schedule to Michigan Works, her husband's required JET participation hours would decrease. From the Michigan Works case notes, it appears this agreement was reached

September 2, 2009, however, the note does not indicate that the JET- Education Verification form was given to claimant or her spouse or when it was to be returned. (Department Exhibit 1, pgs. 14-15) Claimant's husband testified he was given the school verification form while he was at Michigan works on Friday September 4, 2009. A September 4, 2009 Michigan Works note indicates that a message was left requesting school hours attendance. (Department Exhibit 1, pg. 17)

A Michigan Works case note documents a September 8, 2009 phone conversation with claimant during which claimant indicated she would fax the school verification that day and that claimant was told the deadline was 4:30 pm. (Department Exhibit 1, pgs. 17-18) Claimant testified that she spoke with Michigan Works on September 8, 2008 and was told to return the school verification that day, but did not realize it was due by 4:30 pm. Claimant testified she had library hours, a club meeting, and did not have a class where an instructor could sign the verification form until microbiology which was scheduled from 5 pm to approximately 9:30 pm that night.

The first documentation that Michigan Works requested the form from claimant was the call on September 4, 2009, a Friday. Claimant does not have class on Fridays pursuant to the JET Education Verification Form signed by her instructor. (Department Exhibit 1 pg. 16) It is noted that the following Monday, September 7, 2009 was a holiday, Labor Day. Therefore, the first date claimant could get the form signed by an instructor and returned was Tuesday, September 8, 2009 and she did not have class until 5 pm. Claimant did have the form signed by the microbiology instructor that night and faxed it to the department promptly at the end of class at 9:27 pm. (Department Exhibit 1, pg. 15)

The department testified that claimant's husband did participate for 24 hours the week of August 31, 2009 and did provide his check stubs. The Michigan Works representative

testified that claimant's school hours would have reduced claimant's husband's participation requirement of 15-20 hours. If given the credit for claimant's school hours, her husband was complaint with the JET program the week of August 31, 2009 under the modified agreement from the August 28, 2009 triage meeting.

Instead, on September 14, 2009, the department sent a Notice of Case Action indicating the FIP benefits would close effective October 1, 2009 for noncompliance. (Department Exhibit 1 pgs. 1-2) A September 18, 2009 Notice of Noncompliance was issued for claimant's husband not meeting the required participation in JET by September 8, 2009 and for failure to submit a FAST by August 13, 2009. (Department Exhibit 1, pg. 21) A second triage meeting was held on September 25, 2009 and good cause was not found for the noncompliance. (Department Exhibit 1, pg. 23)

This ALJ notes the second reason for noncompliance listed on the September 18, 2009 notice, claimant's husband's failure to complete a FAST by August 13, 2009, occurred prior to the first notice of noncompliance on August 19, 2009. Accordingly, this should have been addressed as part of the noncompliance at issue in the first triage meeting, where it could have been included as a requirement for claimant's husband to complete as part of the First Non-Compliance Letter. Claimant testified that when they received the FAST Mandatory Notice, she did complete the FAST online. Claimant further testified that because all questions on the FAST applied to the family as a group, they did not understand that her husband had to complete a separate FAST as well. Additionally, claimant and her husband testified that if they had known this was still needed they would have completed it as soon as notified or as part of the agreement from the first triage meeting. The Michigan Works representative testified that claimant's wife's FAST was received but it was not noticed that her husband did not complete this until after the

first triage meeting and no notice was given to claimant or her husband that this requirement had not been fulfilled until the September 18, 2009 Notice of Noncompliance was issued.

Based upon the foregoing facts and relevant law, it is found that the claimant had good cause for the second alleged noncompliance. Michigan Works has not shown that reasonable notice was given to claimant to submit the class schedule by 4:30 pm on September 8, 2009. Under DHS policy, a client should be given at least 10 days written notice to provide verifications. (BAM 130) Further, the FAST issue occurred prior to the first Notice of Noncompliance and should not be considered as part of the alleged noncompliance after the August 28, 2009 triage meeting. Claimant's husband did meet the participation requirement when his wife's school hours were considered the week of August 31, 2009. Accordingly, the department's finding of noncompliance after the first triage meeting is not supported.

Additionally, claimant brought letters generated by the new Bridges computer system with her to the October 28, 2009 hearing. These letters were issued on October 23, 2009 and erroneously indicate that an ALJ already determined the department's actions were correct in a October 23, 2009 hearing and therefore an overissuance of FIP benefits occurred for the month of October 2009, so recoupment will begin unless the full amount of the overissuance is paid by November 4, 2009. The letters further erroneously indicate that there will be a six month sanction for FAP benefits for failure to comply with work-related activities. (Department Exhibit 2, pgs. 2-6) This hearing was scheduled for October 28, 2009 and no decision was issued by this ALJ on October 23, 2009. The department indicated a help desk ticket has been issued regarding this Bridges error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had good cause for the late submission of her class schedule and

her husband did meet the participation requirements when reduced by the school hours.

Additionally, the FAST issue occurred prior to the first Notice of Noncompliance and should not be considered as a part of the alleged noncompliance after the August 28, 2009 triage meeting.

Accordingly, the department's FIP determination is REVERSED. Therefore, claimant's FIP shall remain open, without sanction or recoupment of the overissuance indicated in the erroneous October 23, 2009 Bridges notices, in accordance with this decision.

/s/

Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 6, 2009

Date Mailed: November 6, 2009

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

CL/cv

cc:

[REDACTED]