

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: 201025771

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 12, 2010

Allegan County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

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 conducted from Lansing, Michigan on May 12, 2010.

ISSUE

Whether the Department properly terminated Claimant's Family Independence Program (FIP) benefits?

FINDINGS OF FACT

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

1. Claimant was a recipient of FIP benefits and a mandatory Work First/Jobs, Employment and Training (WF/JET) participant.
2. On February 8, 2010, the Department was informed by WF/JET that Claimant was in noncompliance with WF/JET requirements for failing to timely turn in job search hours.

Claimant was supposed to turn in her job search hours by 4pm on February 8th. She did not turn them in until 9:30am on February 9th. At that time, she explained why she was not able to turn them in the previous day and was told that it was too late, a triage date had already been set and she could explain it at that time.

3. On February 9, 2010, the Department sent Claimant a Notice of Noncompliance which stated in pertinent part - "Records show that you have refused or failed to participate as required in employment and/or self sufficiency related activities for FIP, RAP and FAP as noted below:.....A meeting has been scheduled to give you an opportunity to report and verify your reasons for non-compliance." (Exhibits 1-2)
4. On February 18, 2010, a triage meeting was scheduled. Claimant requested a phone triage because she had to attend class at the same time. The Department attempted to contact Claimant without success and then made no good cause determination in regard to Claimant's WF/JET noncompliance. The Department made its decision based on the fact that Claimant did not turn in her paperwork timely.
5. On March 8, 2010, the Department received Claimant's hearing request protesting the termination of her FIP benefits.

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 Dependent Children (ADC) program effective October 1, 1996. Department

policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by DHS when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments will be covered by the JET case manager when a mandatory JET participant is referred at application. BEM 229, p. 1.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP 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. 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. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1.

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 Jobs, Education and Training (JET) Program or other employment service provider.
 - .. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - .. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
 - .. Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP).
 - .. 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.
 - .. Accept a job referral.
 - .. Complete a job application.
 - .. Appear for a job interview (see the exception below).
- . Stating orally or in writing a definite intent not to comply with program requirements.
- . Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- . Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A, pp. 1-2.

The Department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. BEM 233A, p. 7-8

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. A claim of good cause must be verified and documented for member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. BEM 233A, p. 3-4

Good cause should be determined 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 MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A, p. 7

The penalty for noncompliance without good cause is FIP closure. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for not less than 3 calendar months unless the client is excused from the noncompliance as noted in “First Case Noncompliance Without Loss of Benefits” below.
- . For the second occurrence on the FIP case, close the FIP for not less than 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.

- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM, p. 6

In the instant case, the Department stated the following on the Hearing Summary – “At that time the Department used the information at hand to determine that no good cause existed for [REDACTED] non-compliance.....” The undersigned asked numerous questions of the Department witness (who made the phone call for the triage to Claimant and made the no good cause determination) regarding what information the Department had on hand that it considered. It was clear from the Department’s testimony that the only thing taken into consideration was that the Claimant was not timely with her time sheet and she was not available for triage to provide an explanation.

Usually that would warrant a no good cause determination, but not when the Department had information on hand that it did not consider. Department Exhibit 3 contains a note that Claimant turned in her job sheet the morning after her 4pm deadline and “explained that she was at school transferring her classes. Told her that we would discuss it at triage.” In addition, the same Department exhibit contains notes regarding Claimant leaving written documentation in this regard on the morning of the triage. Claimant testified in kind and also stated that she was not able to drop off her job search hours during the morning of February 8th because she was at an OB appointment with her brother’s girlfriend and that was her only transportation. She offered documentation from the OB appointment and class registration. Further, she did not take the Department’s call because it was supposed to be made between 1:30 and 2:00 and she did not receive it until 2:05. She was in the middle of the test so she called back a short time later and was told it was too late. The Department did not consider all information on hand. If they did, they sure didn’t articulate it during the hearing.

With the above said, based on the testimony and documentation offered at hearing, I do not find that the Department established that it acted in accordance with policy in terminating Claimant's FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find that the Department acted in accordance with policy in terminating Claimant's FIP benefits. Accordingly, the Department's FIP eligibility determination is REVERSED, it is SO ORDERED. The Department shall:

- 1) Reinststate Claimant's FIP benefits retroactive to the closure date.
- 2) Issue Claimant supplemental benefits she is entitled to, if any.
- 3) Notify Claimant in writing of the Department's revised determination.
- 4) Claimant retains the right to request a hearing if she would like to contest the Department's revised determination.

/s/ _____
Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 26, 2010

Date Mailed: May 27, 2010

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 receipt date of the rehearing decision.

SB/tg

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