

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: 2010-25913
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 25, 2010
Montcalm 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 25, 2010.

ISSUE

Whether the Department properly terminated Claimant's Family Independence Program (FIP) and reduced her Food Assistance Program (FAP) 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) In November 2009, Claimant received a Jobs, Education and Training Appointment (JET) Notice and attended on her appointment date. Claimant was told that she could not stay because she was not in the computer. Claimant contacted her Department caseworker to inform her of the issue, but she did not receive a return phone call.

(2) On December 8, 2009, the Department sent Claimant and her husband, [REDACTED], a Jobs, Education and Training (JET) Appointment Notice with an appointment date of December 21, 2009. (Exhibit 5)

(3) Claimant and [REDACTED] did not receive the JET appointment Notice(s) and, therefore, did not attend their appointments on December 21, 2009.

(4) On December 21, 2009, the Department sent Claimant and [REDACTED] Notice(s) 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 3,4)

(5) On December 30, 2009, a triage meeting was held. Both Claimant and [REDACTED] appeared at the triage. Claimant stated that she did not attend the JET appointment because she did not receive notice of it and there was also a discussion about her and [REDACTED] medical issues. The Department made a no good cause determination for Claimant's alleged noncompliance because it had been previously determined by MRT that she was not disabled and could attend JET. The Department did not make a good cause determination for [REDACTED]. (Exhibits 6, 7)

(6) On January 15, 2010, the Department sent Claimant a Notice of Case Action which informed Claimant that her FIP case would close and her FAP benefits would be reduced effective 02/01/10. It states that the reason Claimant's FIP case was closing was because - "You or a group member failed to participate in employment and/or self-sufficiency-related activities..... It states Claimant's FAP benefits were reduced because ' [REDACTED] was not eligible - You or another person in your FAP group voluntarily quit a job, reduced hours of

employment or failed to participate in a FAP employment-related activity requirement.....

The “Comments From Your Specialist About This Notice” section states as follows – ‘ [REDACTED] failed to provide requested medical verification of disability claim as requested at 12/30/09 Triage appointment. No good cause for non-participation with JET.” (Exhibit 2)

(7) On January 25, 2010, the Department received Claimant’s hearing request protesting the termination of her FIP benefits and the reduction of her FAP benefits.

(8) The Department’s position at hearing was that the January 15, 2010 Notice of Case Action closed Claimant’s FIP case and reduced her FAP benefits as a result of her alleged noncompliance with JET not as a result of [REDACTED] alleged noncompliance with JET and/or because he did not provide medical verifications requested by the Department at the triage.

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).

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 of Human Services (DHS or department), administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Departmental 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

Noncompliance, without good cause, with employment requirements for FIP/RAP(SEE BEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233b, p. 1 The FAP group member should be disqualified for noncompliance when all the following exist:

- . The client was active both FIP and FAP on the date of the FIP noncompliance, and
- . The client did not comply with FIP/RAP employment requirements, and
- . The client is subject to a penalty on the FIP/RAP program, and
- . The client is not deferred from FAP work requirements (see DEFERRALS in PEM 230B), and
- . The client did not have good cause for the noncompliance. PEM 233B, p. 2

The Department should budget the Last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the first two noncompliances or 12 months for the third and subsequent noncompliances) after the FIP case closes for employment and/or self sufficiency-related noncompliance. The Last FIP grant amount is the grant amount the client received immediately before the FIP case closed. BEM 233B, p. 2

The Department should budget the Last FIP for three or 12 months whether or not the noncompliant person is disqualified from FAP. If a FIP penalty is imposed; the Last FIP grant amount must be budgeted. The Department should budget the Last FIP amount only when the client was receiving FAP on the date of the FIP noncompliance. If the client was only applying

for FIP and violated a FIP employment and/or self-sufficiency-related requirement, the FAP grant would not be affected. BEM 233B, p. 2

In the instant case, Claimant received a JET appointment notice and attended her appointment in November 2009, but was told that she needed to leave because she was not in the computer. Claimant testified credibly that she did not receive the notice to attend the December JET appointment. Claimant may have made a claim of disability and she still may have been discussing that at the triage, but she attempted to attend JET in November and I believe she would have done so in December had she received the notice.

I understand [REDACTED] concern at hearing that the Notice of Case Action appears to close their FIP case and reduce their FAP benefits due to him not attending his JET appointment and/or because he did not provide requested medical verifications. The Notice of Case Action is confusing at best, but the Department's position clearly was that those actions occurred as a result of Claimant's alleged noncompliance. That makes a lot of sense given that the Department did not make a good cause determination for [REDACTED] at triage and any request for medical verifications was not made until the triage and it should be noted was not offered at hearing. As such, Claimant's alleged noncompliance was the issue for hearing and for this decision and the basis of the January 15, 2010 Notice of Case Action.

With the above said, I do not find that the Department acted in accordance with policy in terminating Claimant's FIP benefits and reducing her FAP 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 and reducing her FAP benefits.

Accordingly, the Department's FIP and FAP eligibility determinations from the January 15, 2010 Notice of Case Action are REVERSED, it is SO ORDERED. The Department shall:

- (1) Reinststate Claimant's FIP and FAP benefits retroactive to the closure/reduction 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: June 9, 2010

Date Mailed: June 10, 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.

SMB/vc

cc:

[REDACTED]