

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No. 201048429
Issue No. 1038
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 13, 2010
Office: Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 September 13, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], appeared and testified.

ISSUE

Whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits due to Claimant's alleged noncompliance based on excessive absences from Jobs, Education and Training (JET) program.

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 was an ongoing FIP recipient.
2. As a non-deferred FIP benefit recipient, Claimant was required to attend JET for 30 hours/week.
3. Claimant was absent from JET on 12/4/09, 12/23/09 and 12/28/09 resulting in three hours of absences for Claimant's 12/2009 JET participation.
4. Claimant submitted incomplete job logs to JET for 12/2/09, 12/3/09 resulting in 10 hours of absences in Claimant's 12/2009 JET participation.
5. JET advised Claimant that she failed to submit a job log for 12/28/09 resulting in a five hour absence.

6. JET found Claimant non-compliant with her JET participation requirements on 1/8/10.
7. On 1/26/10, DHS mailed Claimant Notice of Non-Compliance and scheduled Claimant for a triage on 2/1/10 at 1:40 p.m.
8. A phone triage was held on 2/1/10 and DHS determined that Claimant lacked good cause for her absences from JET participation.
9. On 2/1/10, DHS terminated Claimant's FIP benefits effective benefit month 3/1/10. Exhibit 3.
10. On 3/30/10, Claimant requested a hearing disputing 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"), formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq.* and MAC R 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 at 1. As a condition of eligibility, all work eligible individuals (WEIs) must engage in employment and/or self-sufficiency related activities. *Id.* The WEI is considered non-compliant for failing or refusing to appear and participate with JET or other employment service provider. *Id.* at 2.

Note that DHS regulations do not objectively define, "failure or refusing to appear and participate with JET". Thus, it is left to interpretation how many hours of JET absence constitute a failure to participate.

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. *Id.* at 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.* at 4. A claim of good cause must be verified. *Id.* at 3.

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. *Id* at 7. In processing a FIP closure, DHS is required to send the client a notice of non-compliance (DHS-2444) which must include: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration *Id* at 8. In addition, a triage must be held within the negative action period. *Id*. A good cause determination is made during the triage and prior to the negative action effective date. *Id*.

Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. The first and second occurrences of non-compliance results in a 3 month FIP closure. *Id*. The third occurrence results in a 12 month sanction. *Id*.

In the present case, Claimant's JET office found Claimant to be non-compliant when her absences without good cause exceeded 16 hours within a calendar month. This standard is found to be a reasonable interpretation of DHS regulations. Thus, if it was established that Claimant lacked good cause for her absences, non-compliance with JET participation would be established.

Claimant conceded that she was absent for 13 hours from JET in 12/2009. Claimant did not assert good cause for any of these absences. Claimant only disputed her lack of cooperation in submitting a job log for 12/28/09 which created an additional five hour absence. Thus, if Claimant was found non-cooperative with submitting her job log for 12/28/09, Claimant's total absences for 12/2009 would be 18 hours. As previously stated, this amount would be sufficient to establish non-compliance by Claimant with her JET participation.

Claimant made two arguments concerning the submission of her 12/28/09 job log. First, Claimant contended that the job log was due in 1/2010; because the log was due in 1/2010, then Claimant's failure to submit a job log should count as an absence for 1/2010 and not for 12/2009. The undersigned is not persuaded by Claimant's argument.

JET participants are given hours for classroom training at the JET worksite and hours away from JET to submit job applications to employers. WEIs are expected to maintain a job log as a record of the employment applications that they submit. The date of 12/28/09 was intended for Claimant to submit applications to employers on that date. The date that Claimant was supposed to verify her job searches is irrelevant. A failure to verify job searches for 12/28/09 appropriately results in an absence for 12/28/09.

Claimant also contended that she attempted to submit a job search log for 12/28/09 on 1/6/10. Claimant contends that she was not allowed to submit the log because she should have submitted it on a prior date and her case was already referred for triage.

DHS had no first-hand knowledge of Claimant's attempt to submit the job log. DHS failed to submit any verification of the triage outcome. A representative from JET was not present to rebut Claimant's testimony concerning submission of her job log for 12/28/09.

Claimant's testimony was overall more credible than not. Claimant actually assisted DHS by testifying and confirming many details of her non-compliance which DHS should be expected to verify. Claimant did not attempt to dispute any other hours she was absent. Based on the overall testimony by Claimant, it is found that Claimant attempted to submit a job log to JET for 12/28/09.

It is possible that Claimant's 12/28/09 job log submission was unreasonably late. Without any testimony from a person with knowledge (e.g.- Claimant's JET worker) concerning this issue, the undersigned is not inclined to find that Claimant's submission was unreasonably late. Without a finding that Claimant failed to submit her 12/28/09 job log, Claimant would have been compliant with JET participation based on JET's standards. Without a finding of non-compliance, it must be found that DHS improperly terminated Claimant's FIP benefits.

DECISION AND ORDER

The actions taken by DHS are REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefits. It is ordered that DHS reinstate Claimant's FIP benefits effective 3/1/10, remove any disqualification from Claimant's disqualification history stemming from the DHS finding of non-compliance and to restore any other benefits to Claimant as a result of the non-compliance finding.

/s/



Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: September 28, 2010

Date Mailed: September 28, 2010

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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.

CG/hw

cc:

