

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: 2010-22189

Issue No: 1038

Case No:

Load No:

Hearing Date:

May 6, 2010

Kent 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 6, 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 November 12, 2009, the Department was informed by WF/JET that Claimant was in noncompliance with WF/JET requirements – unexcused absences on 10/29, 10/30, 11/2, 11/4, 11/5, 11/6, 11/9 and 11/10. (Exhibit 2)

(3) On November 13, 2009, 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.” (Exhibit 3)

(4) On November 23, 2009, a triage meeting was held and the Department found no good cause for Claimant’s WF/JET noncompliance. (Exhibit 2)

(5) On November 23, 2009, the Department sent Claimant a Notice of Case Action informing her that her FIP case would close effective January 1, 2010 due to her WF/JET noncompliance. (Exhibit 5)

(6) On February 5, 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, Claimant testified that she did not attend the triage because she did not receive the Notice of Noncompliance and, even if she did, she would not have been able to attend because she was hospitalized for an eleven day period with the triage date being right in the middle of her stay. Claimant's testimony was certainly inconsistent regarding what she did or did not receive from the Department during the period she was at the same address and it was not the Department's fault if Claimant was not receiving her mail consistently due to a postal delivery issue, but she would not have been at the triage either way.

The Department testified that it did not simply make a decision based on the fact that Claimant did not attend the triage. Instead, it took into consideration the dates of Claimant's absences and the medical documentation in its possession and came to the conclusion that a no good cause determination was warranted. Claimant was absent October 29th, October 30th, November 2nd, November 4th, November 5th, November 6th, November 8th and November 10th. Claimant testified that she was absent on the October dates because her newborn son was ill. The medical record she provided for herself is dated November 7th and states "Work First not able to work due to health". The Department contacted the doctor and asked him to provide clarification. The doctor informed the Department that he was waiting for medical records, but that he would request that Claimant come back in for an evaluation. Claimant than did not appear for

the triage and the Department found no good cause because several of the absences predated the medical record.

This is not a straight forward situation where Claimant missed the triage and wants to provide documentation after the fact or had a deadline to provide the documentation and did not. Department was on notice that Claimant had some sort of health issue that a doctor felt was serious enough that she should be off work from November 7th –forward pending an evaluation and receipt of medical records. Claimant was then hospitalized 10 days after that. The Department’s testimony was inconsistent regarding whether Claimant’s hospital stay would or would not have been considered in the good cause determination, but a decision was ultimately made that it would not be considered at all because the Department did not have the information at the time of triage. Claimant could not have provided it at triage because she did not know about it and/or she was still in the hospital.

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 REVERSED, it is SO ORDERED. The Department shall:

- (1) Reinstatement Claimant’s FIP benefits retroactive to the closure date.
- (2) Issue Claimant supplemental benefits she is entitled to, if any.

(3) Send Claimant a Notice of Noncompliance scheduling a new triage date, hold a triage and make a good cause determination based on all the information in its possession and/or provided at triage regarding Claimant's absences.

(4) Notify Claimant in writing of the Department's revised determination.

(5) 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 10, 2010

Date Mailed: May 13, 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/lk

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