

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.: 201048574
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 15, 2010
Office: Wayne County DHS (15)

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 15, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], [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. Claimant had a 40 hour/week obligation to attend JET.
3. DHS determined that Claimant attended JET: 38 hours for week beginning 2/7/10, 27 hours for week beginning 2/14/10, 18 hours for week beginning 2/21/10 (with 2 hours of absence excused), 11 hours for week beginning 2/28/10 (with 8 hours of absence excused) and 8 hours for week beginning 3/7/10.
4. DHS was not able to identify for which dates that Claimant was absent from JET.
5. DHS was not able to verify Claimant's absences based on JET sign-in sheets.

6. DHS held a triage on 4/21/10 and found that Claimant lacked good cause for her absences.
7. On 4/22/10, DHS pended termination of Claimant's FIP benefits until 5/4/10 to be effective in Claimant's FIP benefit month 6/2010.
8. Claimant requested a hearing on 4/28/10 disputing the termination of 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), 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 Reference Tables Manual (RFT).

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.

In the present case, DHS alleged that Claimant gradually decreased her participation with JET. DHS asserted that Claimant attended JET 38 hours in the week beginning 2/7/10 and she lessened her participation every week to 11 hours through the week beginning 2/28/10. DHS stated that Claimant only attended eight hours in the week beginning 3/7/10 but was unable to indicate that Claimant's lack of hours was due to Claimant absences or because DHS found Claimant non-compliant within the week and advised Claimant not to return.

In making a determination as to whether Claimant sufficiently participated with JET it is important to know what dates that Claimant was allegedly absent from JET. This information is critical for two reasons.

First, if DHS is not able to provide specific dates of absence it tends to lessen the reliability of the allegation of absence. In the present case, DHS provided weekly summaries of Claimant's JET participation but failed to provide specific dates of her alleged absence. It is possible that DHS erred in calculating Claimant's weekly JET hours. If specific dates of absence are provided, then the weekly participation hours can be verified; without them, the weekly hours cannot be verified. Also, the undersigned is more skeptical of the reliability of the involved recordkeeping in tracking Claimant's participation if specific dates of absences cannot be provided.

Secondly, by not having specific dates, Claimant is disadvantaged by not having specific dates to show good cause. 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.

If JET alleges that Claimant was absent from JET on 3/1/10, Claimant is then put on notice as to what date she would have to establish good cause. A weekly summary of hours gives Claimant a ballpark of what dates JET and DHS consider her to be lacking in participation, but specific dates are preferred.

Claimant testified that she did not fail to miss any time with JET. Claimant's testimony was somewhat contradictory to notes taken from Claimant's triage (Exhibit 1) 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*. If good cause is asserted, a decision concerning good cause is made during the triage and prior to the negative action effective date. *Id*.

Exhibit 1 contains DHS notes from the triage in which Claimant appears to contend that she had good cause for JET absences because she was more concerned about picking up her child rather than attending JET. At the administrative hearing, Claimant denied being absent from JET at all. The undersigned would not typically assume statements from Claimant based on DHS documents except that Claimant signed Exhibit 1. Claimant's signature tends to show an agreement to the document. **In lieu of Claimant's testimony contradicted a previously signed statement**, the undersigned determined that the JET sign-in sheets would have been the best evidence to determine if Claimant was absent from JET.

DHS was given until 9/17/10 to provide sign-in sheets from JET which would have verified specific dates that Claimant was allegedly absent. DHS failed to provide these sheets. As Claimant testified that she consistently attended JET and the absence of evidence from DHS indicating otherwise, it is found that Claimant was not absent from JET during the times asserted by DHS. Accordingly, it is found that Claimant was not non-compliant with JET participation and 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 effective 6/1/10. It is ordered that DHS reinstate Claimant's FIP benefits effective 6/1/10, 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 finding of non-compliance.

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

Date Signed: _____

Date Mailed: _____

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: 

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