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

IN THE MATTER OF: Reg.

No: 2011-10803 Issue No: 1038 Case No: Hearing Date: February 24, 2011 Newaygo County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Admini strative 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 held on February 24, 2011. The claimant, D eanna Burns, appeared and provided testimony.

ISSUE

Did the department properly terminate and s anction the claimant's Family Independence Progr am (FIP) benefits for nonc ompliance with Work First/Jobs, Education and Training (WF/JET) requirements?

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 a mandatory WF/JET participant.
- On October 25, 2010, the department mailed Claimant a Notice o f Noncompliance (DHS 2444) for her failur e to participate as required in employment and/or self-sufficiency related activities. The Notice scheduled a triage appointment for November 3, 2010, at 9:00 a.m. (Department Exhibits 10-11).
- 3. Claimant did not attend the Nove mber 3, 2010, triage appointment. (Department Exhibit 2).

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- 4. On November 5, 2010, the department concluded that good cause had been established for Cla imant's noncompliance because the department did not hav e Claimant's correct addr ess for purposes of mailing Claimant her requested daycare assistance paper work, without which Claimant was unable to participate in job search activities. (Department Exhibit 1).
- 5. In letters dated Nov ember 5, 2010, and sent to all three addresses provided by Claimant, the department provided Claimant with the requested daycare assistance paperwork and advised her of her required attendance at Michigan Works on Novem ber 15, 2010 in order to avoid being placed back in triage. (Department Exhibits 12-14).
- 6. Claimant did not a ttend the November 15, 2010, Michigan Works appointment. (Department Exhibit 1).
- 7. On November 15, 2010, follo wing a telephone triage appointment conducted with Claimant, the department determined that good c ause did not exist for Claiman t's failure to co mply with employment and/or self-sufficiency related activities. (Department Exhibits 15-16).
- 8. On November 17, 2010, Michigan Works mailed Claimant a Notice of Termination from its progr am due to her failure to attend Job Club on November 15, 2010 as she had been assigned. (Department Exhibit 17).
- On November 17, 2010, the departm ent mailed Claimant a Notice of Noncompliance (DHS 2444) for her fail ure to participate as required in employment and/or self-sufficiency related activities. The Notice scheduled a triage appointm ent for November 24, 2010 at 9:00 a.m. (Department Exhibits 18-19).
- 10. Claimant did not attend the November 24, 2010, triage appointment.
- 11. On November 24, 2010, the department mailed Claimant a Notice of Case Action (DHS 1605) advising her that her FIP case would be closed and sanctioned for a 12-month period for her failure to participate as required in employ ment and/or self-sufficien cy related activities. (Department Exhibits 20-21).
- 12. Claimant submitted a hearing request on December 5, 2010, protesting the closure of her FIP case.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R

400.901-400.951. An oppor tunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1).

Clients have the right to c ontest a department decis ion affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P ublic 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 Ai d to Dependent Children (ADC) program effective October 1, 1996. De partment policies are found in the Bridges Administrative Manual (BAM), the Bridges Elig ibility Manual (BEM), Refe rence Table Manual (RF T), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public as sistance 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 reas ons, is initially shared by t he department when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and asse ssments are covered by the JET case manager when a mandatory JET participant is referred at application. BEM 229.

Federal and State laws require each work eligib le individual (WEI) in the FIP and RAP group to participate in the Jobs, Educati on and T raining (JET) Program or other employment-related activities unless temporar ily deferred or engaged in activities that meet participation requirements. These c lients must participate in employment and/or self-sufficiency-related activities to in crease their employability and obtain stab le employment. JET is a program administer ed by the Michigan Department of Energy, Labor and Economic Growth (D ELEG) through the Michigan Works Agencies (MWAs). The JET program serves employers and job seekers for employers to have skille d workers and job seekers to obtain jobs that provide economic self-sufficiency. A WEI who refuses, without good caus e, to partici pate in as signed employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

Noncompliance of applic ants, recipients, or member adds means doing any of the following without good cause:

Failing or refusing to:

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.. 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 Se If-Sufficiency Plan (F SSP) or a Personal Respons ibility 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-sufficiencyrelated 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 abus ing or otherwise behaving disruptively toward anyone condu cting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment suppor t services if the r efusal prevents participation in an employm ent and/or self-sufficiency-related activity. BEM 233A.

JET participants will not be te rminated from a JET program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good c ause. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a m eeting or participate in a c onference call if attendance at the triage meeting is not possi ble. If a client calls to reschedule an already scheduled

triage meeting, the client is offered a tele phone conference at that time. Clients must comply with triage requirement within the negative action period.

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 in clude the date of noncompliance e, 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.

Good cause is a valid reason for nonc ompliance wit h employ ment 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.

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 ident ified by the client) and unmet needs for accommodation. BEM 233A.

The penalty for noncomplianc e 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 occur rence on t he FIP cas e, close the FIP for not less than 3 calendar months.
- . For the third and subsequent oc currence 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 nonc ompliance penalties. BEM 233A.

In this cas e, Claimant was required to participate in the JET/Work First program as a condition of receiving her FIP benefits. On November 17, 2010, the department found that Claimant was noncomplianent for failing to participate as required in e mployment and/or self-sufficiency related activities. At the hearing, Claimant testified that she had in fact performed the requisite 20-hour per week job search activities but was unable to

turn in her logs because she lacked transportation. However, the department representative and the WF/JET case notes indicate that Claimant was familiar with and, as recently as August 2010, had used the transportati on service offered by WF/JET. Claimant also testified that she was unable to contact the department for her November 24, 2010 triage appointment and explain her noncompliance because s he had no telephone service. Yet, Claimant admits she made no effort to reach the department via a payphone or by using someone else's tel ephone, such as that of her mother, whose telephone, according to the department, had been used in the past by the department to reach Claimant.

The Administrative Law Judge finds t hat, based on the material and substantia l evidence presented during the hearing, Claimant has failed to show good c ause for her failure to participate as required in employment and/or self-sufficiency related activities and the department properly closed Claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides that the department properly closed Cla imant's FIP case for non-compliance with WF/JET requirements and the 12-month sanction is AFFIRMED.

It is SO ORDERED.

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Suzanne D. Sonneborn Administrative Law Judge for Maura D. Corrigan, Director Department of Human Services

Date Signed: March 2, 2011

Date Mailed: March 3, 2011

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 receipt of the Decision and Order or, if a ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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