

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: 201112259
Issue No: 1038
Case No: [REDACTED]
Hearing Date: March 17, 2011
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the under signed Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on November 17, 2010. After due notice, a telephone hearing was held on Thursday, March 17, 2011.

ISSUE

Whether the Department of Human Services (Department) properly sanctioned the Claimant's Family Independence Program (FIP) case for noncompliance with the 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. The Claimant received FIP benefits until December 1, 2010.
2. The Department referred the Claimant and mandatory FIP group member [REDACTED] to the Jobs, Education, and Training (JET) program as a condition of receiving FIP benefits.
3. The Claimant and FIP group member [REDACTED] were both noncompliant with the JET program when they failed to attend their JET appointment on October 8, 2010.
4. The Department conducted a triage meeting on October 28, 2010.
5. The Department determined that the Claimant had good cause for her noncompliance with the JET program.

6. Group member [REDACTED] agreed that he was noncompliant with the JET program, and signed a First Noncompliance Letter on October 28, 2010. Group member [REDACTED] agreed to perform a compliance test starting November 3, 2010.
7. The Claimant reported to the [REDACTED] that she had been assaulted by group member [REDACTED] on November 2, 2010.
8. Group member [REDACTED] failed to complete his compliance test when he did not attend his JET appointment on November 3, 2010.
9. On November 9, 2010, the Claimant reported the assault to the Department, and that group member [REDACTED] was no longer welcome in the household.
10. On November 10, 2010, the Department notified the Claimant that it would sanction her FIP benefits as of December 1, 2010.
11. The Department received the Claimant's request for a hearing on November 17, 2010, 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), Reference Table Manual (RTM), 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. PEM 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. PEM 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. PEM 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. PEM 233A, p. 9

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. PEM 233A, p. 4, 5

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. PEM 233A, p. 9

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. PEM, Item 233A.

Noncompliance, without good cause, with employment requirements for FIP/RAP (SEE PEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. PEM 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, 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.

The Claimant was an ongoing FIP recipient, and the Department had referred her and mandatory FIP group member [REDACTED] to the JET program as a condition of receiving FIP benefits. The Claimant and FIP group member [REDACTED] were both noncompliant with the JET program when they failed to attend their JET appointment on October 8, 2010. The Department conducted a triage meeting on October 28, 2010, where the Claimant and [REDACTED] were given the opportunity to establish good cause for their noncompliance.

The Department determined that the Claimant had good cause for her noncompliance with the JET program. Group member [REDACTED] agreed that he was noncompliant with the JET program without good cause, and he signed a First Noncompliance Letter on October 28, 2010. Group member [REDACTED] agreed to perform a compliance test starting November 3, 2010.

The Claimant reported to the [REDACTED] that group member [REDACTED] assaulted her on November 2, 2010.

On November 3, 2010, group member [REDACTED] failed to complete the terms of his compliance test when he did not attend his JET appointment.

On November 9, 2010, the Claimant reported the assault to the Department, and that group member [REDACTED] was no longer welcome in her household.

On November 10, 2010, the Department notified the Claimant that it would sanction her FIP benefits as of December 1, 2010, for noncompliance with the JET program.

Bridges Eligibility Manual Item 233A outlines the procedure for processing a first noncompliance with the JET program. The Department's policy allows a noncompliant FIP recipient to complete a compliance test and not suffer any loss of benefits. If the client fails to meet or contact the FIS or fails to provide verification of compliance without good cause, the three-month sanction applies. BEM 233A.

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. BEM 233A.

Good cause can be established where credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization. BEM 233A.

In this case, there is credible information that indicates that there was an incidence of domestic violence that significantly interfered with self-sufficiency-related activities. There is credible information to suggest that the alleged incident between himself and the Claimant significantly interfered with his ability to complete the compliance test. This Administrative Law Judge finds that the Claimant and group member [REDACTED] had a justifiable reason to avoid contact with each other on October 3, 2010, and that this unplanned event was the reason.

The Department's representative testified that after group member [REDACTED] agreed to perform the compliance test because he had been noncompliant with the JET program, that he was not entitled to good cause consideration for his failure to complete the compliance test.

This Administrative Law Judge finds that Bridges Eligibility Manual 233A requires the Department to implement a three month sanction for a first noncompliance with the JET program after a client fails to provide verification of compliance without good cause. The plain language of this section of the Department's policy indicates that a client's failure to complete the compliance test must be without good cause. In this case, the

Department did not claim to have considered good cause as a factor of group member [REDACTED] failure to complete his compliance test.

This Administrative Law Judge finds that the Department has failed to establish that group member [REDACTED] failed to meet with his JET case manager or provide verification of compliance without good cause. Therefore, the Department has not established that it properly sanctioned the Claimant's FIP benefits for noncompliance with the JET program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has failed to establish that it acted in accordance with policy when it sanctioned the Claimant's Family Independence Program (FIP) case for noncompliance with the Jobs, Education, and Training (JET) program.

Accordingly, the Department's sanction against the Claimant's Family Independence Program (FIP) benefits is REVERSED. It is further ORDERED that the Department shall:

1. Delete the negative action from the Claimant's Family Independence Program (FIP) benefits file.
2. Initiate a determination of the Claimant's eligibility for Family Independence Program (FIP) as of December 1, 2010, with [REDACTED] removed from the Claimant's benefit group.
3. Provide the Claimant with written notification of the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

/s/

Kevin

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

Date Signed: March 30, 2011

Date Mailed: March 31, 2011

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 60 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 timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

KS/vc

cc:

