

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. 201113031
Issue No. 1038
Case No. [REDACTED]
Hearing Date: March 16, 2011
District: Wayne County DHS (43)

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 March 16, 2011. 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 with Jobs, Education and Training (JET) participation.

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 and her spouse were ongoing FIP benefit recipients.
2. Claimant and her spouse were ongoing JET participants.
3. Claimant and her spouse stopped attending JET on approximately 11/9/10.
4. On 12/8/10, DHS mailed Claimant a Notice of Noncompliance (Exhibits 1 and 2) scheduling a triage for 12/16/10 for Claimant and her spouse.
5. Claimant failed to attend the triage.

6. On 12/18/10, DHS mailed Claimant a Notice of Case Action (Exhibit 4) terminating Claimant's FIP benefits to be effective beginning benefit month 2/2011 based on Claimant's failure to comply with employment-related activities.
7. On 12/18/10, DHS also informed Claimant of a FAP reduction based on Claimant's failure to comply with employment-related activities.
8. On 12/28/10, Claimant requested a hearing disputing the termination of FIP benefits and the disqualification of FAP benefits based on the alleged JET noncompliance.

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. Federal and state laws require each work eligible individual (WEI) in a FIP group to participate in Jobs, Education and Training (JET) Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. *Id.* These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth through the Michigan Works! Agencies. *Id.* 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. *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, it was not disputed that Claimant and her spouse stopped attending JET as of 11/9/10. The notes (Exhibit 3) made by a JET staff person indicate that on 11/30/10, Claimant and her spouse were still no-shows to JET. Thus, Claimant and her spouse were absent from JET for approximately three full weeks before JET terminated Claimant for attendance reasons. It is found that three weeks is a sufficient period of time to be considered non-compliant with JET participation.

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*. If good cause is asserted, a decision concerning good cause is made during the triage and prior to the negative action effective date. *Id*.

DHS established that all necessary procedures were followed in scheduling and holding a triage with Claimant and her spouse. Claimant and her spouse attempted to participate in the triage by telephone but were unable to do so due to a lack of telephone service. The undersigned is not inclined to penalize a client for a lack of telephone service. However, Claimant and her spouse were given a reasonable time to attend the triage or to make arrangements to appear by telephone. Even if it is found that Claimant had a reasonable basis to not participate in the triage, it would not explain Claimant's failure to discuss good cause with JET prior to the triage.

Claimant testified that during 11/2010, she and her spouse were having various difficulties. Specifically, Claimant stated that her basement was flooding and her child was suffering from seizures. Claimant failed to verify both assertions of good cause with documentation. Claimant also was not in much, if any, contact with JET concerning her status as a JET recipient during her time of absence. Claimant stated that she left a single voicemail with JET but left no telephone number where she could be reached; she merely stopped attending. The undersigned might be inclined to find Claimant's excuses met a basis for good cause if the excuses were verified and if JET was better informed of Claimant's circumstances; as the circumstances were not verified and JET was not sufficiently informed, it is found that Claimant did not have good cause for failing to attend JET.

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*.

DHS demonstrated that all required procedures were met in terminating Claimant's FIP benefits. It is found that DHS properly terminated Claimant's FIP benefits based on Claimant's noncompliance with JET participation.

Noncompliance without good cause, with employment requirements for FIP/RAP (see BEM 233 A) may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B at 1. DHS is to disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP and FAP on the date of the FIP noncompliance.
- The client did not comply with FIP/RAP employment requirements.
- The client is subject to a penalty on the FIP/RAP program.
- The client is not deferred from FAP work requirements
- The client did not have good cause for the noncompliance.

Claimant's non-compliance with JET also resulted in a member disqualification that adversely affected Claimant's FAP benefits. With the finding that Claimant was non-compliant with employment related activities due to her JET absences, it is also established that Claimant met the conditions for FAP disqualification. Accordingly, it is found that DHS properly reduced Claimant's FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefits and reduced Claimant's FAP benefits based on a determination that Claimant was noncompliant with employment related activities. The actions taken by DHS are AFFIRMED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 03/25/11

Date Mailed: 03/30/11

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/dj

cc:

