

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Registration. No: 201125565
Issue No: 1038
Case No: [REDACTED]
Hearing Date: June 29, 2011
Kent County DHS

Administrative Law Judge: Mark A. Meyer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with MCL 400.9, MCL 400.37 and 1979 AC, R 400.903. Claimant requested a hearing on March 14, 2011, and, after due notice, one was held on June 29, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

In dispute was whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits, based on her determined second noncompliance with Work First/Jobs, Education, and Training (WF/JET) requirements.

FINDINGS OF FACT

Based on the competent, material, and substantial evidence on the whole record, the Administrative Law Judge finds as relevant fact:

1. At all times relevant to this matter, Claimant was receiving FIP benefits.
2. On February 8, 2011, Claimant contacted her WF/JET case manager stating that she was unable to fulfill her work requirements due to a physical illness. Claimant was directed by her career manager to submit medical documentation of her illness by the close of business on February 10, 2011. (Department's Exhibit D-1.)
3. Claimant failed to provide the requested medical documentation by the established due date. As a result, the Department sent a notice to Claimant on February 22, 2011, informing her that a triage meeting was scheduled for March 2, 2011. The notice erroneously informed Claimant that this was her third determined noncompliance with the WF/JET

program – in fact, it was her second. (Department's Exhibits D-1, D-2; Department representative's hearing testimony, June 29, 2011.)

4. Because Claimant subsequently requested that the triage meeting be conducted by telephone, the meeting was rescheduled for March 3, 2011. (Department's Exhibit D-1.)
5. Claimant attended the triage meeting and reasserted that a physical illness prevented her from participating in her WF/JET work activity. The Department requested that Claimant provide medication documentation of her illness by 2:30 p.m. on March 3, 2011. (Department's Exhibits D-1, D-5; Hearing testimony, June 29, 2011.)
6. Sometime after 3:00 p.m. on March 3, 2011, Claimant placed an envelop containing her medical documents in the drop box at the Department's local Kent County office. She did not directly provide a copy of this material to her WF/JET case manager as agreed upon at the triage meeting. (Department's Exhibits D-1, D-4, D-5; Claimant's hearing testimony, June 29, 2011.)
7. Determining that Claimant failed to timely submit the requested medical documentation, the Department found her to be noncompliant with WF/JET work requirements. On March 3, 2011, the agency informed Claimant that her FIP benefits case would be closed, and that she would be sanctioned from the program for three months, effective April 1, 2011. (Department's Exhibit D-7.)
8. From the Department's FIP closure determination and three month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated March 14, 2011.)

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by 1979 AC, R 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). Indeed, an applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p 1.¹

¹ All citations are to Department of Human Services (Department) policy in effect at the time of the agency action in issue.

Here, the Department determined that no good cause existed for Claimant's second incidence of noncompliance, based on her failure to provide sufficient documentation supporting a claim that she could not participate in required WF/JET work activities due to a physical illness. The agency further determined that Claimant's FIP cash benefit case would be closed and that she would be sanctioned from the program for three months, effective April 1, 2011. Claimant's request for hearing followed.

The FIP was established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC 601, *et seq.* The Department administers the FIP in accordance with MCL 400.10, *et seq.*, and Rules 400.3101 through 400.3131. The FIP replaced the Aid to Dependent Children (ADC) program, effective October 1, 1996. Agency policies pertaining to the FIP are found in the BAM, Bridges Eligibility Manual (BEM), and program reference manuals. The program's purpose is to provide temporary cash assistance to support a family's movement to self-sufficiency. BEM 230A, p 1. The focus is to assist clients in removing barriers so that they may participate in activities leading to self-sufficiency. BEM 233A, p 1

Federal and State laws, from which the Department's policies derive, require each work eligible individual (WEI) in a FIP group to participate in the WF/JET program, unless temporarily deferred or engaged in activities that otherwise meet the program's participation requirements. BEM 230A, p 1. The purpose of the WF/JET program is to increase a client's employability and to obtain employment. BEM 230A, p 1.

A WEI who fails or refuses, without good cause, to participate in assigned employment or other self-sufficiency related activities is subject to penalties. BEM 230A, p 1; BEM 233A, p 1. These penalties include the following:

- A delay in eligibility at the time of application;
- Ineligibility;
- Case closure for a minimum of three or twelve months.

BEM 233A, p 1.

Noncompliance in engaging in WF/JET employment or self-sufficiency related activity requirements generally means doing any of the following without good cause:

- Failing or refusing to:
 - Appear and participate with the [WF/JET] [p]rogram or other employment service provider.

- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP [Family Self-Sufficiency Plan] process.
- Develop a[n] . . . FSSP.
- Comply with activities assigned on the 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[.]
- 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.]

Good cause for not complying with WF/JET employment or self-sufficiency related activities means "a valid reason for noncompliance . . . that [is] based on factors that are beyond the control of the noncompliant person." BEM 233A, p 3. A claim of good cause must be verified. BEM 233A, p 3. Good cause includes the following:

- Employed forty hours
 - The person is working at least 40 hours per week on average and earning at least the State minimum wage.

- Client unfit
 - The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity.

- Illness or injury
 - The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client.

- Reasonable accommodation
 - The Department, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

- No child care
 - The client requested child care services from the Department, the Michigan Works Association (MWA), or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable, and within reasonable distance of the client's home or work site.

- No transportation
 - The client requested transportation services from the Department, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

- Illegal activities
 - The employment involves illegal activities.

- Discrimination
 - The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc.
- Unplanned event or factor
 - Credible information indicates an unplanned event or factor that 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:
 - a. Domestic violence
 - b. Health or safety risk
 - c. Religion
 - d. Homelessness
 - e. Jail
 - f. Hospitalization
- Comparable work
 - The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.
- Long commute
 - Total commuting time exceeds:
 - a. Two hours per day, NOT including time to and from child care facilities, or
 - b. Three hours per day, including time to and from child care facilities.

BEM 233A, pp 4-5.

The penalty for noncompliance without good cause is closure of the FIP case as follows:

- First occurrence of noncompliance = FIP case closure for not less than three calendar months, unless the client is excused from the noncompliance. See BEM 233A, pp 8-9.

- Second occurrence of noncompliance = FIP case closure for not less than three calendar months.
- Third and subsequent occurrence of noncompliance = FIP case closure for not less than twelve months.

BEM 233A, p 6.

Where the Department determines that a participant in the WF/JET program is noncompliant, that person will not be terminated from the program without first being provided a triage meeting at which the noncompliance and the existence of good cause are discussed. BEM 233A, p 7. At that time, a good cause determination is made by the agency based on the best available information provided at triage and prior to the negative action date. BEM 233A, p 7; see also BEM 233A, p 10.

Here, a triage meeting took place on March 3, 2011. Claimant attended the meeting via telephone and agreed that documentation supporting her claim she could not participate in work activity due to a physical illness would be provided to her WF/JET case manager by 2:30 p.m. that same day.

Claimant testified at hearing, however, that she did not know that the medical documentation requested by the Department at triage was supposed to be provided directly to her WF/JET case manager. She simply placed it in the drop box at the Department's local Kent County office sometime after the conclusion of the triage meeting on March 3, 2011. (Claimant's hearing testimony, June 29, 2011.)

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Based on the testimony of the Department's representatives at hearing and the documentary evidence pertaining to the March 3, 2011, triage meeting, it cannot be reasonably concluded that Claimant's placement of the medical documentation in the drop box at the agency's local office met the agreed-upon timeliness requirements established at triage. The record indicates that Claimant was asked if she could provide the requested medical documentation directly to her WF/JET case manager by 2:30 p.m. on March 3, 2011. (See, e.g., Department's exhibits D-1, D-4, D-5.) The evidence sufficiently established that Claimant agreed to comply with this condition, but did not.

Even if Claimant's medical documentation had been timely provided as agreed upon at the March 3, 2011 triage meeting, it failed to meet the requirements for sufficient verification.

WEIs meeting the following criterion are only temporarily not expected to participate in the WF/JET program:

- Persons with a mental or physical illness, limitation, or incapacity expected to last less than three months, and which prevents participation in the program. (Short-term incapacity.)

BEM 230A, pp 7, 11.

Persons suffering from a short-term incapacity may be deferred from the WF/JET program for up to three months. BEM 230A, p 11. Verification of short-term incapacity must be provided by a medical doctor (M.D.), or doctor of osteopathy (D.O.). BEM 230A, p 11.

Here, Claimant provided a one-page, hand-written note ostensibly created by a registered nurse on February 1, 2011. According to this note, Claimant was "currently being treated for health issues that would make it difficult for her to attend [WF/JET] programming." The note further indicated that Claimant was "undergoing treatment and testing till [sic] June 2011 and would like to excuse her from [WF/JET activities] till [sic] June 2011." (Claimant's Exhibit C-2.) This documentation failed in at least two ways to establish that Claimant suffered from a short-term incapacity, thereby deferring her from WF/JET work requirements.

First, the note was not signed by an M.D. or D.O.; it thus failed on its face to meet the verification requirements of BEM 230A. Second, it failed to provide any information to the Department concerning: (1) what type of medical illness Claimant was suffering from, (2) what treatment was being provided, or (3) how the medical illness or treatment prevented her from participating in WF/JET work requirements.

Claimant also provided a two-page document pertaining to the scheduling of a colonoscopy on March 7, 2011, and the procedures she was required to perform in preparation for this event. (Claimant's Exhibit C-1.) But, nothing in this document established that Claimant was unable to meet her WF/JET work requirements, except, possibly, on the day of the procedure. (See Claimant's Exhibit C-1, p 1.)

These two documents were the sum total of Claimant's medical information provided to the Department.

Claimant testified at hearing, however, that in addition to the documents comprising Claimant's Exhibit C-1, she also included "a copy of my blood work and anything else that had to do with my health condition." (Claimant's hearing testimony, June 29, 2011.) She did not, however, provide any testimony regarding this additional documentation (e.g., results, diagnosis, treatment, etc., contained therein). Her testimony thus failed to shed any light on the medical condition that she asserted prevented her from participating in WF/JET work requirements. Moreover, even if Claimant's testimony was deemed credible, BEM 230A requires a client to verify a short-term mental or physical incapacity through physician documentation. Claimant failed to adequately provide this verification.

Viewing the testimony and other evidence in its entirety, it cannot be reasonably concluded that Claimant met her burden of demonstrating good cause for her second noncompliance with WF/JET work requirements in this matter.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department properly determined that Claimant was noncompliant with WF/JET work requirements without good cause. Based on this determination, the agency properly terminated and sanctioned Claimant's FIP benefits for at least a three-month period, effective April 1, 2011.

The Department's action is UPHELD.

It is SO ORDERED.

/s/ _____
Mark A. Meyer
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 7, 2011

Date Mailed: July 8, 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 90 days of the filing of the original request.

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Claimant may appeal this decision and order to the circuit court for the county in which she resides within 30 days of the mailing of this decision and order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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