

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

IN THE MATTER OF:



Reg. No: 201128648
Issue Nos: 1038
Case No: [REDACTED]
Hearing Date: June 28, 2011
Saginaw 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 April 5, 2011, and, after due notice, one was held on June 28, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

In dispute was:

- (1) Whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits, based on her first noncompliance with Work First/Jobs, Education, and Training (WF/JET) requirements; and
- (2) Whether the agency erred in removing Claimant from her Food Assistance Program (FAP) group as a result of this noncompliance.

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 both FIP and FAP benefits.
2. As part of her WF/JET requirements for remaining in the FIP, Claimant was responsible for completing 20 hours of community service per month. (Department's exhibit D-6; Department's hearing summary, dated April 11, 2011.)
3. On November 19, 2010, Claimant contacted her WF/JET career manager, stating that she was having difficulty completing the required number of community

service hours at her current site. Claimant asked the career manager if she could chose another site. The career manager provided Claimant with a new community service contract form and told her that the contract needed to be signed by the new site and returned on November 29, 2010. (Department's exhibit D-2; Department's hearing summary.)

4. Claimant appeared at the November 29, 2010, appointment, but did not turn in the signed contract from a new community service site. She was told by her WF/JET career manager that the signed contract needed to be turned in by December 16, 2010. (Department's exhibit D-2; Department's hearing summary.)
5. On December 16, 2010, Claimant attended the appointment and turned in pay stubs pertaining to her employment, but failed to provide the WF/JET career manager with a signed community service contract as previously requested. The pay stubs indicated that Claimant was not working 20 hours per week as required. She was then told to turn in the signed contract, along with additional pay stubs, by January 3, 2011. (Department's exhibit D-2; Department's hearing summary.)
6. Claimant failed to attend the January 3, 2011, appointment. (Department's exhibit D-1; Department's exhibit D-2; Department's hearing summary.)
7. On January 14, 2011, the Department informed Claimant that she was deemed noncompliant in her WF/JET requirements – a triage meeting was scheduled for January 28, 2011. (Department's exhibit D-1; Department's hearing summary.)
8. Claimant attended the triage meeting, but did not have a signed community service contract as previously requested. Moreover, the pay stubs that she submitted at that time indicated that she was no longer working the required 20 hours per week. (Department's exhibit D-2; Department's exhibit D-7; Department's hearing summary.)
9. At the January 28, 2011, triage meeting, Claimant agreed that she was noncompliant with her WF/JET requirements. Because this was her first determined incidence of noncompliance, the Department offered Claimant the opportunity to rectify the situation by meeting with her career manager on February 2, 2011, and provide current pay stubs and a signed community service contract. (Department's exhibit D-3; Department's exhibit D-4; Department's exhibit D-5.)
10. Claimant attended the February 2, 2011, meeting, but failed to provided the requested signed community service contract. (Department's exhibit D-2; Department's hearing summary.)

11. On February 14, 2011, the Department informed Claimant that her FIP benefits case was being closed, effective March 1, 2011, and that she was sanctioned from the program for 3 months. As a result of Claimant's FIP noncompliance and sanction, her FAP benefits were reduced to [REDACTED] per month. (Department's exhibit D-8.)
12. From the Department's FIP closure determination and three month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated April 5, 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

Here, the Department determined that no good cause existed for Claimant's first failure to comply with WF/JET requirements; specifically, her refusal or failure to provide a signed community service contract as requested, and her refusal or failure to participate in community service as required when her employment dropped below 20 hours per week. The agency determined that Claimant's FIP cash benefit case would be closed and she would be sanctioned from the program for three months, effective March 1, 2011. As a result of this action, the Department also reduced Claimant's FAP benefits to [REDACTED] per month, effective March 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

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

temporarily deferred or engaged in activities that otherwise meet the program's participation requirements.² 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.

² Group composition is the determination of which individuals living together are included in the Family Independence Program (FIP) eligibility group. Bridges Eligibility Manual (BEM) 210, p 1.

- 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 January 28, 2011. Claimant attended that meeting and agreed that she was noncompliant, without good cause, by failing to provide a signed community service contract and not participating in community service once her required employment dropped below 20 hours per week.

At the triage meeting for a first noncompliance with WF/JET requirements, sanctions are discussed with the client. An offer is made to the client to comply with stated WF/JET requirements by a given due date. If the client accepts the offer, agrees with the Department's determination of noncompliance, agrees to comply with the stated WF/JET requirements, and subsequently verifies compliance by the given due date, the

agency will reinstate the client's case without loss of FIP benefits. The instance of noncompliance will, however, remain on the client's record even if she complies. BEM 233A, pp 8-9.

In the present matter, in addition to agreeing to the Department's first noncompliance determination without good cause, Claimant also signed an agreement at the triage meeting that she would provide the Department with a signed community service contract and current pay stubs by February 2, 2011. It appeared that this appointment was delayed until February 7, 2011; Claimant attended that meeting, but failed to provide the requested signed community service contract or current pay stubs.

Claimant's noncompliance with WF/JET activities, specifically her refusal or failure to provide the Department with a signed community service contract, and her refusal or failure to participate in community service once her employment dropped below 20 hours per week, was unequivocally established.

Despite being offered numerous opportunities to obtain and submit a signed community service contract, Claimant asserted that good cause existed for her failure to comply with the specified WF/JET requirements. According to Claimant, she was simply unable to find a community service site to attend. Her assertions in this matter are unpersuasive.

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).

Here, Claimant admitted that the Department provided her with a list of potential community service sites to contact. Moreover, an agency representative credibly testified at hearing that there were more than one hundred non-profit community service agencies located in Saginaw County – Claimant's county of residence. According to the Department, community service is a self-directed activity of the WF/JET program and clients are responsible for finding a community service site at which to participate when employment drops below the required hours per week.

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 noncompliance with WF/JET requirements in this matter.

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in the Code of Federal Regulations, 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Rules 400.3001 through 400.3015. As with FIP, agency policies pertaining to the FAP are found in the

BAM, BEM, and program reference manuals. The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

Noncompliance, without good cause, with WF/JET requirements for FIP may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B, p 1. A FAP penalty for noncompliance may apply in the following situation:

- The client is active in both FIP and FAP, and becomes noncompliant with a cash program requirement (e.g., WF/JET activity) without good cause.

BEM 233B, p 1.

The Department disqualifies a FAP group member for noncompliance when all the following exist:

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

BEM 233B, p 2.

Where there is an established first occurrence of noncompliance without good cause, a person is disqualified from the FAP for a period of one month. BEM 233B, p 4.

Here, Claimant was an active participant in the FAP program at the time of her first FIP non-compliance. FAP benefits were therefore properly reduced as a result of this noncompliance based on: (1) her removal from the FAP group; and (2) the inclusion of her last FIP grant amount in the FAP budget. See BEM 233B, pp 1, 2, 4.

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 program 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 March 1, 2011.

Furthermore, based on Claimant's FIP noncompliance, the Department did not err in removing her from the FAP group, resulting in a decrease of her FAP benefits.

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: 07/01/2011

Date Mailed: 07/05/2011

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.

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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