

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

IN THE MATTER OF:

[REDACTED]

Registration. No: [REDACTED]
Issue Nos: 1038
Case No: [REDACTED]
Hearing Date: June 23, 2011
Berrien 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 20, 2011, and, after due notice, one was held on June 23, 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 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 pertinent to this matter, Claimant was receiving FIP cash benefits.
2. On March 24, 2011, the Department determined Claimant to be noncompliant with WF/JET employment and/or self-sufficiently related activities. A notice of noncompliance was mailed informing her that a triage meeting was scheduled for March 30, 2011. The purpose of the meeting was to permit Claimant to report and verify her reasons for the determined noncompliance. (Department's Exhibit B-1.)
3. On the date and time set for the triage meeting, Claimant failed to appear. (Department's Exhibit A-1; Department representative's hearing testimony, June 23, 2011.)

4. The Department mailed a notice of case action to Claimant on March 31, 2011, informing her that her FIP cash benefit case would be closed, effective May 1, 2011, due to her refusal or failure to participate in the WF/JET program as required. Claimant was also informed that she would be ineligible to receive FIP benefits for at least 3 months as a result of her noncompliance. (Department's Exhibits D-1, D-2.)
5. This was Claimant's first determined incidence of noncompliance without good cause. (Department's Exhibit B-1; Department's hearing summary, dated April 27, 2011.)
6. From the Department's FIP closure determination and three month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated April 20, 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 no good cause existed for Claimant's first failure to comply with WF/JET requirements. Claimant's FIP cash benefit case was closed and she was sanctioned for three months, effective May 1, 2011. From this determination, Claimant filed a request for hearing.

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

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

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.

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. (Emphasis added.) 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.

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.

Here, the Department asserted that Claimant missed three separate WF/JET work assignments: (1) on January 26, 2011, regarding a certified nurse assistant (CNA) orientation program; (2) on January 31, 2011, for not reporting for job search check-in; and (3) on March 24, 2011, also for not reporting for job search check-in. (See Department's Exhibits A-1 through A-5.) This administrative law judge finds that the agency provided credible testimony and other evidence sufficiently supporting two of these missed assignments.²

First, it must be noted that Claimant was or should have been well aware of the requirements for receiving FIP benefits, especially those pertaining to the WF/JET program. On December 27, 2010, she signed three documents, each of which unambiguously set forth what was expected from a client in the program. For example:

I agree to check in with [the WF/JET contractor] on the assigned check in day to turn in my completed job search/readiness activity logs as assigned.

* * *

It is my responsibility to provide any doctor's notes, court documents, etc. to excuse missing hours.

* * *

I understand that training activities are an integral part of the [WF/JET] program and that missing a scheduled training appointment . . . will result in triage. [Department's Exhibit A-7.]

* * *

Job [s]eekers are expected to be at [the WF/JET contractor] on your assigned day with job search logs completed. If they are not able to attend on this scheduled day/time, they must discuss this with their career developer [CD] in advance.

² The Department failed to sufficiently establish Claimant's noncompliance regarding the January 26, 2011, certified nurse assistant (CNA) orientation. At hearing, the Department's representative equivocated on whether Claimant could have actually attended one of several orientations on that date.

* * *

Job seekers must provide proper documentation (doctor excuse, court documents, etc.) as soon as possible to their [CD] to receive an excused absence.

* * *

If a job seeker fails to report to [the WF/JET contractor] on a scheduled time, it may be counted as a missed assignment.

* * *

Two missed assignments will result in triage of a job seeker's case with [the Department]. [Department's Exhibit A-8.]

On December 27, 2010, Claimant also agreed to report to her WF/JET contractor on Wednesdays between 2:00 and 3:30 p.m.³ She was required to actually meet with her CD when checking in; just dropping off job search logs was not acceptable and was considered "a missed assignment." (Department's Exhibit A-9.)

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, regarding the January 31, 2011, missed check in, Claimant testified that she went into labor and had a child on that day. There was, however, no evidence that she ever informed anyone at either her WF/JET contractor or the Department about this event. At no time did Claimant provide any documentation (e.g., medical records) indicating that this event occurred. Further, she turned in a completed job search log to her contractor only six days later. Her testimony pertaining to this missed assignment was simply not credible, and there was no established good cause for failing to meet this obligation.

Regarding the March 14, 2011, missed check in, Claimant testified that this was either an occasion that she came in early or late and merely placed her job search log into the WF/JET contractor's drop box. As noted above, she was aware, or should have been aware, that this was not an acceptable practice for meeting her WF/JET work-related

³ It appears from the record, however, that Claimant's Work First/Jobs, Education, and Training (WF/JET) contractor was permitting her to report on Mondays. (See Department's Exhibits A1 through A-6.)

activities. Again, there was no established good cause for her failure to adequately satisfy the requirement of actually meeting with her CD when turning in job search logs.

Finally, Claimant provided no reason or excuse for why she failed to attend the scheduled triage meeting on March 30, 2011. The Department testified that the notice of noncompliance setting up this meeting was sent to the same address as the notice of hearing (which Claimant attended). Had Claimant attended the triage meeting, she would have been provided an opportunity to rectify the situation and possibly retain her FIP benefits. See BEM 233A, pp 8-9. Claimant failed to carry her burden of demonstrating "a valid reason for noncompliance . . . that [is] based on factors that are beyond the control of the noncompliant person." BEM 233A, p 3.

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.

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: 06/28/2011

Date Mailed: 06/30/2011

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.

2011-30336/MAM

Claimant may appeal this Decision and Order to the Circuit Court for the county in which he/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.

MAM/alc

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