

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

IN THE MATTER OF:



Registration. No: 2011-30344
Issue No: 1038
Case No: [REDACTED]
Hearing Date: June 29, 2011
Bay 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 January 24, 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 a determined third 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. At all times relevant to this matter, Claimant was diagnosed with Crohn's disease.¹ (Claimant's Exhibit C-1, pp. 3, 4, 5, 15, 19.) As a result of this condition, she suffered from constipation and intermittent diarrhea. (Claimant's Exhibit C-1, p. 5.)
3. Claimant entered into a WF/JET agreement on September 13, 2010, wherein she consented to participate in the program for a minimum of 20

¹ Crohn's disease is a chronic inflammation of the intestinal wall that may affect any part of the digestive tract. Although it has no known cure, treatment is available to reduce inflammation and relieve symptoms. *The Merck Manual of Medical Information* (2003), pp 739, 740.

hours per week. At that time, Claimant was informed that she would be subject to triage and possible sanctions if she failed to meet her participation commitment. (Department's Exhibit D-14.)

4. Claimant was also informed on that date of what constituted noncompliance regarding the WF/JET agreement. (Department's Exhibit D-12.)
5. On October 12, 2010, Claimant was informed that she had until October 18, 2010, to obtain community service placement, and that she was required to begin participating in community service no later than October 25, 2010. (Department's Exhibit D-3.)
6. Claimant began to experience vaginal bleeding on October 15, 2010. She contacted her physician on October 18, 2010, regarding this condition. (Claimant's Exhibit C-1, p. 2.)
7. Claimant presented to her physician on October 20, 2010, and was diagnosed as having had a spontaneous miscarriage. (Claimant's Exhibit C-1, pp. 2, 3, 9, 10.)
8. Claimant presented again to her physician on October 25, 2010, for the purpose of discussing surgical dates for an elective tubal ligation. (Claimant's Exhibit C-1, p. 3.)
9. Claimant appeared for a pre-surgical evaluation regarding the tubal ligation procedure on November 22, 2010. (Claimant's Exhibit C-1, pp. 4, 5, 7, 15-16.)
10. The tubal ligation was performed on November 29, 2010, as an out-patient procedure. (Claimant's Exhibit C-1, pp. 17-18; Department's Exhibit D-15.)
11. Claimant presented to her physician for a post-surgical visit on December 10, 2010. (Claimant's Exhibit C-1, p. 5.)
12. On January 6, 2011, Claimant visited her physician; at that time, she was diagnosed as suffering from molluscum contagiosum and was provided medication for the treatment of that condition.² (Claimant's Exhibit C-1, pp. 19-20, 21.)
13. Claimant never completed her WF/JET community service obligations.

² Molluscum contagiosum is a contagious disease of the skin caused by a virus; it is characterized by the appearance of small, epidermal growths. *Stedman's Concise Medical Dictionary for the Health Professionals*, Fourth Edition (2001), p. 629.

14. On January 7, 2011, Claimant was deemed by the Department to be noncompliant with her WF/JET community service requirements. (Department's Exhibits D-2, p. 1; D-4.)
15. A triage meeting was held on January 18, 2011. Claimant attended and informed the Department that she was suffering from medical issues and did not feel well enough to participate in community service. (Department's Exhibit D-5.)
16. After determining that Claimant was noncompliant without good cause for her failure to participate in assigned WF/JET community service, the Department issued a notice of case action against Claimant on January 18, 2011. This notice informed Claimant that this was her third incidence of noncompliance, that her FIP cash benefits would cease effective February 1, 2011, and that her FIP case would close for at least twelve months. (Department's Exhibit D-1.)
17. From the Department's FIP case closure determination and twelve month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated January 24, 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. 1.³

Here, the Department determined that no good cause existed for Claimant's third failure to comply with WF/JET requirements; specifically, her refusal or failure to participate in community service activities. Claimant's FIP cash benefit case was to be closed and she was to be sanctioned for twelve months, February 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

³ All citations are to Department of Human Services (Department) policy in effect at the time of the agency action in issue.

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.⁴ 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.

⁴ 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.

- 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 was held on January 18, 2011; Claimant attended. Although Claimant testified that the Department was provided with at least some relevant medical records at the time of triage, she was found to be noncompliant with her WF/JET community service requirements without good cause.

Claimant's noncompliance with those community service requirements was unequivocally and properly established. Documentation provided, as well as Claimant's own testimony, indicated that she did not participate at all in that portion of the WF/JET program. Claimant asserted at hearing, however, that good cause existed for her failure to comply. According to Claimant, she suffered from medical conditions that precluded her from participating in the assigned community service. This assertion was insufficiently supported.

Credible testimony and documentation demonstrated that Claimant was triaged in this matter not for failing to engage in job search activities, but for her failure to participate in WF/JET community service from October 12, 2010 (the date on which she was assigned her community service responsibilities) through January 18, 2011 (the date on which the triage meeting took place). The medical records presented in this matter established that Claimant did, in fact, experience various medical maladies, and did undergo at least one elective out-patient surgical procedure during the time period in issue. But, even accounting for Claimant's October 18, 2010, miscarriage, and her November 29, 2010, out-patient tubal ligation procedure, there was insufficient medical documentation establishing that she was physically unfit or suffered a debilitating illness or injury that precluded her from meeting her WF/JET community service requirements for the entire October 2010 to January 2011 time period. See BEM 233A, p. 4.

For example, the entire medical record pertaining to Claimant's diagnosis of molluscum contagiosum contained no reference to any limitations on her activities or even her ability to be around other people.

Moreover, despite Claimant's familiarization with the WF/JET program and its requirements, there was a lack of credible evidence establishing that she informed the Department of her medical situation between October 15, 2011 (the date she incurred vaginal bleeding pertaining to an eventual miscarriage on October 18, 2010) until the date of her WF/JET triage meeting (January 18, 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).

Here, Claimant testified that she met with her WF/JET case manager "on the Monday or Tuesday" following her "October 18[, 2010,] miscarriage." The WF/JET case manager's notes for October 20, 2010, the same day Claimant presented to her physician and was determined to have suffered from a spontaneous miscarriage, indicated the following:

[Claimant] came to tell me that she has chosen and met with [the] Salvation Army Store for community service. She's waiting to hear back from them regarding her background

check. [Claimant] is hoping to start volunteering next week.
[Department's Exhibit D-1, p. 2.]

Incredibly, there was no mention by either the WF/JET case manager or Claimant of any physician's office visit, miscarriage, or other medical issues. Claimant's hearing testimony to the contrary lacked sufficient credibility.

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 assigned WF/JET community service requirements for the time period in issue.

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 community service requirements without good cause. Based on this determination, the agency properly terminated and sanctioned Claimant's FIP benefits for at least a twelve-month period, February 1, 2011.

The Department's action is UPHELD.

It is SO ORDERED.

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

Date Signed: _____

Date Mailed: _____

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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