

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-30922

Issue No: 1038

[REDACTED]

Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received on March 31, 2011. After due notice, a telephone hearing was held on June 22, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was a mandatory WF/JET participant. (Hearing Summary).
2. Claimant's live-in-partner was added to her FIP case on December 27, 2010, effective August 1, 2010. As a result, Claimant's live-in-partner was referred to WF/JET orientation. (Department Exhibits 1-4).
3. Claimant's live-in-partner failed to attend WF/JET on December 10, 2010 and January 17, 2011. (Department Exhibit 5).
4. On March 18, 2010, WF/JET notes indicate Claimant's hours were changed to 35 hours a week beginning December 30, 2010. (Department Exhibit 9).

5. On March 28, 2011, WF/JET received the warning letter mailed to Claimant on March 18, 2010, informing her to participate on March 22, 2011 orientation and that she was short on hours. The warning letter was stamped, "Return to Sender." (Department Exhibit 8).
6. On March 29, 2011, Claimant called to reschedule her Triage for March 31, 2011. WF/JET also received Claimant's time sheet from week March 21, 2011 through March 25, 2011, and noted that Claimant was still completing only 20 hours of job search instead of 35. (Department Exhibit 8)
7. On March 25, 2011, the department mailed Claimant and Claimant's live-in-partner a Notice of Noncompliance scheduling Claimant for Triage on March 31, 2011, and Claimant's live-in-partner for March 29, 2011, because they failed to participate as required in employment and/or self-sufficiency related activities. The notices explained that failure to show good cause at the Triage could result in loss of benefits. (Department Exhibits 6-7).
8. On March 31, 2011, Claimant attended her Triage. Claimant informed the department at the Triage that she was unaware her live-in-partner had been added to the case. (Department Exhibit 8).
9. The department mailed Claimant a Notice of Case Action on March 31, 2011, informing Claimant that her FIP program was being closed as of May 1, 2011 through July 31, 2011, because a group member failed to participate in employment and/or self-sufficiency related activities. (Hearing Summary; Department Exhibit 11).
10. Claimant submitted a hearing request on March 31, 2011, protesting the closure of her FIP benefits. (Request for a Hearing).
11. This is Claimant's second non-compliance with the FIP program. (Department Exhibit 10).

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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 or Department) administers the FIP program pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Reference Table Manual (RFT).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by the department when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments are covered by the JET case manager when a mandatory JET participant is referred at application. BEM 229.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. JET is a program administered by the Michigan Department of Licensing and Regulatory Affairs (LARA), through the Michigan Works Agencies (MWAs). 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. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- . Failing or refusing to:
 - .. Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
 - .. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - .. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).

- .. Comply with activities assigned to on the Family Self-Sufficiency Plan (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 (see the exception below).
- . 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.

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. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period.

The department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. BEM 233A.

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. A claim of good cause must be verified and documented for member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. BEM 233A.

Good cause should be determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for not less than 3 calendar months unless the client is excused from the noncompliance as noted in "First Case Noncompliance Without Loss of Benefits" below.
- . For the second occurrence on the FIP case, close the FIP for not less than 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

In this case, WF/JET referred Claimant to Triage because her live-in-partner failed to attend the orientation and as a result Claimant was supposed to be providing 35 hours of job search but was only completing 20. Claimant attended her Triage and explained that she had never received a warning letter from JET informing her that she had to increase her job search hours.

Claimant credibly testified that she had given JET her change of address and that they mailed the warning letter to her old address, which is why she never received it. The JET representative initially testified that Claimant never informed JET of her change of address. Prior to the end of the hearing, the JET representative found Claimant's change of address in Claimant's file. According to the documentation in Claimant's JET file, Claimant had informed JET of her change of address between July 2010 and September 2010. Therefore, Claimant admittedly was never informed that she had to increase her job search hours from 20 to 35 hours.

However, Claimant's live-in-partner was added to Claimant's group on December 27, 2010, effective August 1, 2010, and as such was required to participate in WF/JET as a

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 receipt 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.

VLA/ds

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