

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-31703

Issue No: 1038, 3029

[REDACTED]

Kent County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 26, 2011. Through the assistance of an interpreter, the claimant personally appeared and provided testimony.

ISSUE

1. Did the department properly terminate and sanction the claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) 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 does not speak English and requires the assistance of an interpreter.
2. On October 28, 2010, the claimant applied for FAP, FIP and Medical Assistance (MA) and, on the application, indicated that his address was the following: [REDACTED] (Department Exhibit 3 & 4). The claimant had assistance from a third party that could read and write English when the application was prepared. (Exhibits 3 & 4).

3. On January 21, 2011, the department mailed a Notice of Case Action (DHS-1605) indicating that his FIP was closed for failure to cooperate with child support¹ and FAP was decreased. (Department Exhibits 5 & 6). The DHS-1605 was sent to claimant's address at [REDACTED] [REDACTED] [REDACTED] [REDACTED].” (Department Exhibits 5 & 6).
4. On January 21, 2011, the department received a letter returned from the U.S. Post Office that was directed to the claimant from the Office of Child Support. The letter was sent to claimant's address at [REDACTED] [REDACTED] [REDACTED], Apt 201, Wyoming, MI 49509.” (Hearing Summary).
5. On January 26, 2011, the department received a letter from the claimant indicating that the department had the incorrect Apartment address for the claimant and that the proper address should be [REDACTED] rather than [REDACTED] (Hearing Summary).
6. On February 17, 2011, the claimant was referred to the JET program and the department mailed the claimant a WF/JET Training Appointment Notice (DHS-4785) indicating that he was scheduled to attend JET orientation on March 3, 2011. (Hearing Summary). The notice was mailed to the claimant at [REDACTED] [REDACTED] [REDACTED].” (Hearing Summary).
7. The Post Office returned the DHS-4785 as “attempted unknown.” (Department Exhibit 13).
8. The claimant did not attend JET orientation on March 3, 2011. (Hearing Summary).
9. At the relevant time, someone had been intercepting the claimant's mail and had been denying the claimant access to his mail.
10. On or about February 17, 2011, the department mailed the claimant a JET appointment notice that scheduled an appointment on March 3, 2011. The claimant failed to report to JET on this date. (Department Exhibit 14). There was no triage appointment nor was there a good cause finding.
11. On March 11, 2011, the department mailed the claimant a Notice of Case Action (DHS-1605) closing his FIP benefits for two reasons: (1) [REDACTED] [REDACTED] are not eligible children and (2) failure to provide necessary verification information. (Department Exhibit 16).²

¹ The Department indicated following the hearing that the child support non cooperation notice was in error.

² The Department failed to attach any documentation to support that the claimant received any notices or other correspondence regarding the claimant's participation with the JET program. The Department also has not provided any documents that show the

12. The claimant requested a hearing on April 25, 2011. (Request for a Hearing).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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) and the Program Reference Manual (PRM).

With regard to FIP, the department requires its clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 233 A. The department's focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. BEM 233A. But there are consequences for a client who refuses to participate, without good cause. BEM 233A.

With regard to FIP, a Work Eligible Individual (WEI), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A. As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A.

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.

claimant was asked to submit verification information that he purportedly failed to provide.

- .. 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) or PRPFC.
- .. Appear for a scheduled appointment or meeting related to assigned activities.
- .. Provide legitimate documentation of work participation.
- .. 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, pp. 1-2.
 - . 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. BEM 233A. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A. Good cause includes, but is not limited

to, credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for 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 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. 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. BEM 233A. The department policy requires the department to coordinate a local process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the department requires its staff to offer a phone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A. When a phone triage is conducted for a first noncompliance and the client agrees to comply, the department shall complete the First Noncompliance Letter (DHS-754). BEM 233A.

The department must determine good cause based on the best information available during the triage and prior to the negative action date. BEM 233A. Good cause may be verified by information already on file with DHS or MWA. BEM 233A. If the FIS, JET case manager, or MRS counselor do not agree as to whether “good cause” exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement. BEM 233A.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking. BEM 233A. Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. BEM 233A. This does not include applicants. BEM 233A, p. 7.

If the client establishes good cause within the negative action period, the department shall not impose a penalty. BEM 233A. The department must send the client back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

If the client does not provide a good cause reason within the negative action period, the department is required to determine good cause based on the best information available. BEM 233A. If no good cause exists, the department will allow the case to close. BEM 233A. If good cause is determined to exist, the department should delete the negative action. BEM 233A.

- . The department will disqualify a FAP group member for noncompliance when:
- . The client was active 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 not deferred from FAP work requirements (see DEFERRALS in BEM 230B), and the client did not have good cause for the noncompliance. BEM 233B, p. 1.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-related activities, providing legitimate documentation of work participation, etc. BEM 233A.

Policy provides that non-deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. BEM 233B. However, unlike cash benefits, which are tied to participation in the Jobs, Education and Training (JET) program, there are no hourly work participation requirements for the Food Assistance Program. BEM 233B. In order to receive FAP benefits, non-deferred adults must comply with the following work requirements and may not:

- Voluntarily quit a job of 30 hours or more per week without good cause.
- Voluntarily reduce hours of employment below 30 hours per week without good cause.
- Be fired from a job for misconduct or absenteeism. BEM 233B.

However, if the job quit, reduction in hours or firing occurred more than 30 days prior to the application date, no penalty applies. BEM 233B.

Non-deferred adults who are not working or are working less than 30 hours per week must:

- Accept a bona-fide offer of employment.
- Participate in activities required to receive unemployment benefits if the client has applied for or is receiving unemployment benefits. BEM 233B.

The department is to determine each group member's participation requirement at:

- Application.
- Redetermination.
- Change in circumstance that might affect the person's participation requirement; see BAM 105 for changes in circumstances that are required to be reported for the FAP. BEM 233B.

The department is required to keep the client informed regarding the FAP program. BEM 233B. Policy requires the department worker to explain all of the following to FAP clients:

- FAP work requirements.
- Rights and responsibilities of non-deferred adults in FAP households.
- Consequences of their failure to comply.
- Right of deferred persons to participate.
- Reporting requirements.
- What constitutes good cause for noncompliance; see BEM 233B.

For all programs, department policy provides that the local office must (1) determine eligibility, (2) calculate the level of benefits, and (3) protect client rights. BAM 105. Policy requires that each local office shall **ensure** client rights (described in BAM 105) are honored and that client responsibilities are explained in understandable terms. BAM 105. Clients, on the other hand, must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105. Clients must take actions within their ability to obtain verifications. BAM 105.

Department policy also specifically indicates that “[p]articular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English.” BAM 105. For purposes of FIP and SDA, the department is not required to verify an individual's address. BEM 220.

With regard to FAP only, policy requires the department to verify that the individual lives in the area the department services. BAM 220. However, the department may not deny benefits to an individual with no permanent address (e.g., new arrival, migrant, homeless) **solely** for lack of a verified address. BEM 220. When this occurs, the department employee is required to note the lack of verification and the reason for same on the DHS-1171 or on the case comments section on the Bridges computer system. BEM 220.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

In this case, the claimant is not fluent in English and he requires assistance throughout the entire process. To the extent the department contends that the claimant was noncompliant with his JET obligations, this Administrative Law Judge finds that the claimant has shown good cause. The claimant's credible testimony indicates that he was the victim of someone intercepting his mail, which constitutes "an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities." BEM 233B. Here, the claimant had shown good cause. The claimant's mail had been intercepted. The department was aware that there was a problem with the claimant's mail because the department received several undelivered return envelopes from the post office.

Overall, the evidence shows that the local office failed to take steps to ensure the claimant's rights were honored or that the claimant's responsibilities were explained in understandable terms. Due to unforeseen events (the claimant's mail being intercepted), language barriers and poor communication from the department, it was not within the claimant's ability to obtain verifications. There was no evidence that the claimant was even provided with sufficient notice that he was required to return any verifications to the department on a date certain or that he had JET appointments or other obligations.

Accordingly, this Administrative Law Judge finds that the department should not have closed the claimant's FIP and FAP for these reasons.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that:

1. The department improperly terminated and sanctioned the claimant's Family Independence Program (FIP) benefits.
2. The department improperly terminated and sanctioned the claimant from the Food Assistance Program (FAP).

Accordingly, the department's actions are REVERSED.

The department is hereby instructed to do the following:

- Verify the claimant's proper mailing and residence address.
- Reprocess the claimant's FIP and FAP benefits and issue any retroactive benefits the claimant is entitled to receive.
- Re-enroll the claimant in the JET program.

IT IS SO ORDERED.

_____/s/_____
C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/26/11
Date Mailed: 8/29/11

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 mailing 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.

CAP/ds

