

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201132439
Issue No. 1038
Case No. [REDACTED]
Hearing Date: June 2, 2011
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 June 2, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, [REDACTED], Manager, and [REDACTED], JET Coordinator, appeared and testified.

ISSUE

Whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits and reduced Claimant's FAP benefits due to Claimant's alleged noncompliance with Jobs, Education and Training (JET) participation.

FINDINGS OF FACT

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

1. Claimant was an ongoing FIP benefit recipient.
2. Claimant was an ongoing JET participant with a 35 hour/week participation obligation.
3. JET continuously found Claimant met her 35 hour weekly requirement by verifying 3 hours/week of community service, school attendance for 16 hours/week and 16 hours/week in study time for school.
4. Claimant was directed to use a form titled "JET Classroom Training Attendance Verification" (JET-CTA) to verify her school attendance and study time and a

form titled "JET Community Service Program/ Work Experience/Job Club Attendance Verification" (JET-CS) to verify her community service participation.

5. In 12/2010, Claimant accidentally used the JET-CTA form to verify her community service and the JET-CS form to verify her school attendance.
6. As a result of the error, DHS determined that Claimant only should have received credit for three hours /week in JET participation and therefore, Claimant was noncompliant in meeting her JET participation.
7. On 2/3/11, a triage was held (by Macomb County DHS) to determine whether Claimant had good cause for the alleged noncompliance with JET participation.
8. DHS found no good cause for Claimant's noncompliance and documented the finding on a form titled "Macomb County JET Triage Notes" (Exhibit 3).
9. Macomb County DHS determined Claimant's alleged noncompliance to be her first FIP employment-related activity disqualification.
10. As a first time for noncompliance, Claimant was given an opportunity to return to JET and to continue receiving FIP benefits with no penalty other than a first time finding of noncompliance occurring.
11. Claimant's case was subsequently transferred to Wayne County DHS who determined that Claimant had a previous noncompliance with FIP employment-related activities.
12. As a result of the alleged second noncompliance, Wayne County DHS terminated Claimant's FIP benefits effective 4/2011.
13. On 4/18/11, Claimant requested a hearing to dispute the termination of FIP benefits.

CONCLUSIONS OF LAW

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.* DHS, formerly known as the Family Independence Agency, administers the FIP pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A at 1. Federal and state laws require each work eligible individual (WEI) in a FIP group to participate in Jobs, Education and Training (JET) Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. *Id.* These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth through the Michigan Works! Agencies. *Id.* 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. *Id.* The WEI is considered non-compliant for failing or refusing to appear and participate with JET or other employment service provider. *Id.* at 2. Note that DHS regulations do not objectively define, "failure or refusing to appear and participate with JET". Thus, it is left to interpretation how many hours of JET absence constitute a failure to participate.

DHS regulations provide some guidance on this issue elsewhere in their policy. A client's participation in an unpaid work activity may be interrupted by occasional illness or unavoidable event. BEM 230 at 22. A WEI's absence may be excused up to 16 hours in a month but no more than 80 hours in a 12-month period. *Id.*

It was not disputed that Claimant had a 35 hour/week JET participation requirement. DHS contended that Claimant failed to meet her 35 hour weekly requirement in 12/2010. DHS conceded that Claimant verified her three hours of weekly community service but contended that Claimant did not verify her school attendance or study time because she failed to use the proper form in verifying her attendance.

DHS failed to present the relevant 12/2010 form that allegedly failed to verify Claimant's school attendance. Though Claimant acknowledged submitting the wrong form, the absence of the form is problematic for DHS because the undersigned has no basis to appreciate why Claimant's submission failed to verify her school attendance. DHS presented one of Claimant's school attendance forms (Exhibit 4) though it reflected Claimant's attendance for 2/2011. Claimant's school attendance for 2/2011 was not an issue in the present case; Claimant school attendance for 12/2010 was an issue.

The undersigned is not very inclined to uphold a noncompliance based solely on the purely bureaucratic reasoning that Claimant used the wrong form to verify school attendance. The more important issue is whether Claimant actually attended school or not. DHS accused Claimant of not attending school in 12/2010 but provided no evidence other than some unspecified absence on the form submitted by Claimant, which the undersigned did not receive. DHS never bothered to check with Claimant's school to see if she attended. This tends to show that the noncompliance was based on

the form which Claimant used to verify her school attendance, not a failure to participate with JET.

Claimant submitted a document which summarized Claimant's education attendance, presumably the education which JET approved for 32 hours in weekly attendance and study time; the document verified Claimant's attendance as 100%. Claimant cannot be said to have missed time in 12/2010 if she had 100% attendance.

The only sensible argument made by DHS was that Claimant was given time to submit verification of her school attendance on the proper form and Claimant failed to do so. Claimant responded that she was unable to do so due to the costs in bringing the form to JET. The undersigned did not find Claimant's excuse to be compellingly persuasive. However, based on the other evidence, all favoring Claimant, Claimant's failure to correct her slight error is not found to be significantly relevant to the finding of noncompliance. It is found that Claimant was compliant with JET participation and that DHS erred in terminating Claimant's FIP benefits.

Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. The first and second occurrences of noncompliance results in a 3 month FIP closure. *Id*. The third occurrence results in a 12 month sanction. *Id*.

There was a dispute as to whether Claimant was noncompliant with JET in 2009. DHS contended that Claimant was noncompliant in 2009 and therefore the 2/2011 finding of noncompliance would have been Claimant's second occurrence of noncompliance. Though the alleged 2009 noncompliance may become an issue if Claimant is subsequently found noncompliant with JET participation, it is irrelevant for purposes of this decision. Because it has been found that Claimant was compliant with JET participation, whether Claimant had a previous disqualification is a moot consideration.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefits effective 3/2011. It is ordered that DHS shall:

- reinstate Claimant's FIP benefits back to 4/2011;
- supplement Claimant for any benefits lost as a result of the improper finding of noncompliance;
- remove any disqualification from Claimant's disqualification history as a result of the improper finding of non-compliance.

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The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 15, 2011

Date Mailed: June 15, 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.

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.

CG/ctl

cc: [REDACTED]
Wayne County DHS (19)/1843
[REDACTED]
Christian Gardocki
Administrative Hearings