

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201136051
Issue No. 1038
Case No. [REDACTED]
Hearing Date: July 14, 2011
Macomb County DHS (36)

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 July 14, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, [REDACTED], Manager and [REDACTED], Michigan Works Agency Representative, appeared and testified.

ISSUES

1. Whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits due to Claimant's alleged noncompliance with Jobs, Education and Training (JET) participation.
2. Whether Claimant properly requested a hearing concerning direct support services.

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.
3. Claimant had a 30 hour/week JET participation requirement.
4. Claimant was absent from JET for the following dates and number of hours (in parenthesis): 5/2/11 (4.5 hours), 5/3/11 (6 hours), 5/4/11 (6 hours), 5/5/11 (6 hours and 5/6/11 (6 hours)

5. On 5/12/11, DHS mailed Claimant a Notice of Noncompliance (Exhibit 2) informing Claimant of a triage appointment on 5/24/11.
6. Claimant attended the triage and claimed she was compliant with JET participation because she was employed and because she turned in a job log to account for her absences.
7. On an unspecified date, DHS determined Claimant had no good cause for the absences and terminated Claimant's FIP benefits to be effective 6/2011.
8. On 5/24/11, Claimant requested a hearing to dispute the FIP benefit termination.

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 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).

The undersigned will refer to the DHS regulations in effect as of 4/2011, the estimated month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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 30 hour/week participation obligation to attend JET. It was also not disputed that Claimant failed to attend JET for 28.5 hours between 5/2/11-5/6/11. Claimant's week long absence is sufficient to establish a basis for noncompliance with JET participation.

Claimant contended that she was participating with a tutoring training program during her time of absence from JET. Claimant stated that her time spent with the program should have counted toward her JET participation, and therefore she met her weekly JET obligation. It must be determined whether Claimant attended the training and whether it should have been approved as time participated with JET.

Claimant testified that she left a message for her assigned JET worker about the training program before she attended the training. The JET contact person was not present to rebut Claimant's testimony. However, the undersigned found many problems with Claimant's testimony.

A JET representative testified concerning notes made by Claimant's assigned JET worker and the notes made no reference to any communications from Claimant concerning the training. The notes tended to be detailed in other areas which tends to suggest that the note-maker would not have overlooked documenting a call from Claimant concerning attendance at a training program.

It also was not established why Claimant would believe that she believed it was acceptable to attend a training prior to getting approval from a JET specialist. Though Claimant testified that she was never referred to any other persons at JET during her worker's absence, the undersigned doubts whether Claimant made sufficient efforts to try to report this information to another JET specialist.

It was not disputed that Claimant submitted a job log (Exhibit 1) concerning how she spent her time for the week of 5/2/11-5/6/11. A job log is a record that contains information of jobs sought by JET participants. Claimant's job log listed information for several employers but made no reference to her tutoring training. The undersigned could not understand why Claimant would submit a document listing jobs she sought as a record of her time for 5/2/11-5/6/11 when Claimant's testimony unequivocally stated that she failed to attend JET due to an all-day and week-long training. The undersigned repeatedly inquired about the discrepancy and Claimant repeatedly failed to answer the inquiry.

Note that the submission of the job log, even if accurate, would not have excused Claimant from her lack of participation with JET, as Claimant still had an obligation to attend the JET worksite. Further, even accepting the job log as authentic, the log was submitted past the deadline for its submission.

The undersigned was also concerned with Claimant's repeated attempts to deflect blame at her specialist and the JET representative. Claimant made little attempts to justify her absence from JET during the week of 5/2/11-5/6/11 but found her JET worker's absence problematic. Claimant thought she was entitled to advance notice of her worker's absence, a preposterous suggestion. The undersigned also did not believe Claimant when she said that she attempted to attend JET during days of her alleged absence but was not given information on where to report simply because her assigned worker was absent. Based on the totality of the evidence, it is found that Claimant was noncompliant with JET participation.

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. *Id* at 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id* at 4. A claim of good cause must be verified. *Id* at 3.

Claimant did not claim good cause for her absence from JET; she only contended that she was compliant with participation. Thus, no good cause consideration need be undertaken.

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. *Id* at 7. In processing a FIP closure, DHS is required to send the client a notice of non-compliance (DHS-2444) which must include: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration *Id* at 8. In addition, a triage must be held within the negative action period. *Id*. If good cause is asserted, a decision concerning good cause is made during the triage and prior to the negative action effective date. *Id*.

There was no dispute that DHS scheduled a triage and followed all necessary procedures prior to terminating Claimant's FIP benefits. The only relevance of the triage was that, during the triage, Claimant contended that she verified her attendance at the training by submitting a business card from the training. A generic business card is insufficient to verify attendance at a training. JET properly rejected the card as a form of verification.

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*.

It was not disputed that by the time of the triage, Claimant began receiving employment income. The undersigned considered whether DHS should have evaluated Claimant's FIP benefit eligibility based on the new employment income rather than the finding of noncompliance. At the time of the triage, Claimant's non-compliance with JET participation had already occurred and the subsequent employment had no bearing on the non-compliance; thus, DHS would have no reason to change the reason Claimant's FIP benefits were ending. Based on the finding of noncompliance, the lack of good cause and the proper procedures followed by DHS, it is found that DHS properly terminated claimant's FIP benefits effective 6/2011.

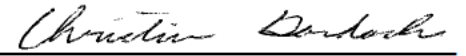
Direct Support Services (DSS) are goods and services provided to help families achieve self-sufficiency. BEM 232 at 1. DSS includes Employment Support Services (ESS) and Family Support Services (FSS) that directly correlates to removing an employment-related barrier. *Id*. Vehicle purchases and repairs are DSS. *Id* at 11.

Claimant testified that she also requested a hearing to dispute a failure by JET and/or DHS to approve a payment for a repair to Claimant's vehicle. The issues to be disputed at a hearing are framed by clients in their hearing requests. Claimant's Request for a Hearing dated 5/24/11 read "Work/First supported documentation submitted. DHS worker [REDACTED], [REDACTED], [REDACTED] n (illegible) compliant!" Claimant made no reference to a dispute concerning a vehicle repair. As DHS failed to receive any notice of Claimant's intent to raise the issue of vehicle repair, the issue is inappropriate for review by administrative decision. Accordingly, Claimant's hearing request concerning direct support services is dismissed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to give notice of a dispute concerning direct support services concerning vehicle repair. Claimant's hearing request is PARTIALLY DISMISSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefits effective 6/2011 due to Claimant's noncompliance with JET participation. The actions taken by DHS are PARTIALLY AFFIRMED.



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

Date Signed: July 18, 2011

Date Mailed: July 18, 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.

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