

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201136554
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: July 17, 2011
Wayne County DHS (41)

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 17, 2011 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly terminated Claimant's Family Independence Program (FIP) 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. On 12/28/10, Claimant was expected to return to JET following an excused absence due to injuries sustained from a 10/2010 car accident.
3. Claimant failed to return to JET on 12/28/10.
4. DHS considered Claimant to be noncompliant with JET participation based on the failure to attend JET on 12/28/10.
5. On 2/15/11, DHS held a triage to discuss the reasons for Claimant's absence.

6. Claimant was advised she would be found to have good cause for her absence if she submitted a Medical Needs (DHS 54A) form, which verified a legitimate excuse for absence.
7. Claimant was mailed a DHS 54A by DHS on 3/5/11 and again on 4/6/11 but did not mail a Verification Checklist informing Claimant of a due date for the DHS 54A.
8. On an unspecified date, DHS initiated termination of Claimant's FIP benefits and mailed a Notice of Case Action to Claimant warning of a FIP benefit termination effective 5/2011.
9. On 5/16/11, after Claimant's FIP benefits were terminated, Claimant submitted a DHS 54A to DHS
10. On 6/2/11, 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 administers the FIP pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. DHS 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.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.
- Failing or refusing to appear and participate with JET or other employment service provider.
- Failing or refusing to complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
- Failing or refusing to develop a Family Self-Sufficiency Plan (FSSP).
- Failing or refusing to comply with activities assigned on the FSSP.
- Failing or refusing to provide legitimate documentation of work participation.
- Failing or refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing or refusing to participate in employment and/or self-sufficiency-related activities.
- Failing or refusing to accept a job referral.
- Failing or refusing to complete a job application.
- Failing or refusing to 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. *Id.*

In the present case, it was not disputed that Claimant missed a 12/28/10 appointment to begin JET attendance. It was also not disputed that Claimant was deferred from participation prior to 12/28/10 based on injuries sustained in a car accident.

Though Claimant did not dispute that she did not attend JET beginning 12/28/10, Claimant stated that she was submitting medical documents to her JET worker which provided verification of a medical excuse from JET participation. Claimant credibly testified that she provided JET with the documents for several weeks following her car accident and there had never been an issue with JET accepting them until 12/28/10.

The undersigned would find Claimant's testimony to be persuasive evidence of an excuse from JET attendance except that it was questionable whether Claimant needed to be excused from JET during this period. There was evidence that Claimant was capable of working for an employer beginning 1/8/11. If Claimant was capable of performing employment, that would be strong evidence that Claimant was capable of JET participation.

Claimant clarified that though she could return to her employment in 1/2011, based on her physician's restrictions and only for a limited amount of hours. The undersigned had no evidence of Claimant's medical restrictions other than Claimant's testimony; neither did JET. In response, JET appropriately gave Claimant an opportunity to provide evidence of a basis for deferral from JET participation.

The testifying DHS specialist read from the JET worker's notes and stated that Claimant was given one month from the date of triage to verify a medical excuse for failing to participate with JET. As it turned out, DHS ended up giving Claimant two full months to submit a DHS 54A prior to the FIP benefit termination in 4/2011.

Claimant responded that she was never given the specific form (the DHS 54A) that JET required to be completed, though DHS verified that Claimant was mailed the form twice, once on 3/5/11 and again on 4/6/11. Though Claimant did not receive the DHS 54A until several days following the triage, Claimant had over a one month period to return the DHS 54A prior to DHS terminated her FIP benefits.

Claimant also testified that she provided the form to JET in 4/2011 though it was not disputed that DHS did not receive the form until 5/16/2011, well after Claimant's FIP benefits were terminated. DHS failed to present any witnesses from JET that could have refuted Claimant's testimony. If believed, this would be strong evidence that no FIP benefit termination should have occurred. For purposes of receiving documents, a submission to JET should serve as well as a submission to DHS.

The undersigned was also concerned with the manner in which a Medical Needs form was requested. DHS must give clients at least ten days to submit verifications. *Id.* Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. *Id.* DHS must tell the client what verification is required, how to obtain it, and the due date. *Id.* at 2. DHS is to use the DHS-3503, Verification Checklist (VCL) to request verification. *Id.* at 3.

Though DHS verified that Claimant was mailed a DHS 54A, DHS conceded that a VCL did not accompany the mailing. Thus, DHS requested a form from Claimant but did not advise Claimant, in writing, of the due date to return the form. DHS testified that Claimant was given a verbal due date at the triage though the testifying specialist had no first-hand knowledge that this occurred; his assumption was based on notes from Claimant's JET specialist.

Based on the above analysis, it must be determined whether Claimant was noncompliant with JET participation. There are some concerns as to whether Claimant made reasonable efforts in providing DHS or JET with the form needed to verify her medical excuse. Ultimately, the undersigned is more persuaded by the failure by DHS in

providing Claimant with a VCL with the Medical Needs form. Once it was determined that the Medical Needs form was required to verify Claimant's medical excuse, DHS had an obligation to give Claimant a written deadline to submit the form. The DHS failure to do so is fatal to upholding the FIP benefit termination. It is found that DHS improperly terminated Claimant's FIP benefits.

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 5/2011. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefits back to 5/2011;
- (2) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance;
- (3) remove any disqualification from Claimant's disqualification history as a result of the improper finding of non-compliance.

The actions taken by DHS are REVERSED.



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.

CG/hw

cc:



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