

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

IN THE MATTER OF:



Registration. No: 2011-37884
Issue No: 1038
Case No: [REDACTED]
Hearing Date: July 14, 2011
Montcalm County DHS

Administrative Law Judge: Mark A. Meyer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with MCL 400.9, MCL 400.37 and 1979 AC, R 400.903. Claimant requested a hearing on December 27, 2010, and, after due notice, one was held on July 14, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

In dispute was whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits, based on a determined first noncompliance with Work First/Jobs, Education, and Training (WF/JET) requirements.

FINDINGS OF FACT

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

1. At all times relevant to this matter, Claimant was receiving FIP benefits.
2. Claimant was deferred from participation in the WF/JET program due to the birth of her child. The deferral ended, however, on September 1, 2010. (Department's hearing summary, dated June 11, 2011; Department representative's hearing testimony, July 14, 2011.)
3. On August 27, 2010, the Department mailed Claimant a WF/JET appointment notice, informing her that she was required to attend a program meeting on September 7, 2010. (Department's Exhibit D-1.)

4. Claimant failed to attend the September 7, 2010, WF/JET program meeting. (Department representative's hearing testimony.)
5. On November 19, 2010, the Department mailed a notice of noncompliance to Claimant, informing her that a triage date was scheduled for November 24, 2010, to discuss her failure to attend the September 7, 2010 WF/JET program meeting. (Department's exhibit D-2.)
6. Claimant failed to attend the November 24, 2010, triage meeting. (Department representative's hearing testimony; Claimant's hearing testimony, July 14, 2010.)
7. On December 13, 2010, the Department mailed Claimant a notice of case action, informing her that the FIP case would be closed effective January 1, 2011, because of her noncompliance with WF/JET program requirements. The notice also informed Claimant that she was sanctioned from the FIP for at least three months. (Department's Exhibit D-3.)
8. From the Department's FIP case closure determination and three month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated December 27, 2010.)

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by 1979 AC, R 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). Indeed, an applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p. 1.

Here, the Department determined that no good cause existed for Claimant's first failure to comply with WF/JET requirements; specifically, her refusal or failure to attend a scheduled September 2010 program meeting. Claimant's FIP cash benefit case was closed and she was sanctioned from the program for three months. From this determination, Claimant filed a request for hearing.

The FIP was established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC 601, *et seq.* The Department administers the FIP in accordance with MCL 400.10, *et seq.*, and Rules 400.3101 through 400.3131. The FIP replaced the Aid to Dependent Children (ADC) program, effective October 1, 1996. Agency policies pertaining to the FIP are found in the BAM, Bridges Eligibility Manual

(BEM), and program reference manuals. The program's purpose is to provide temporary cash assistance to support a family's movement to self-sufficiency. BEM 230A, p. 1. The focus is to assist clients in removing barriers so that they may participate in activities leading to self-sufficiency. BEM 233A, p. 1

Federal and State laws, from which the Department's policies derive, require each work eligible individual (WEI) in a FIP group to participate in the WF/JET program, unless temporarily deferred or engaged in activities that otherwise meet the program's participation requirements. BEM 230A, p. 1. The purpose of the WF/JET program is to increase a client's employability and to obtain employment. BEM 230A, p. 1.

A WEI who fails or refuses, without good cause, to participate in assigned employment or other self-sufficiency related activities is subject to penalties. BEM 230A, p. 1; BEM 233A, p. 1. These penalties include the following:

- A delay in eligibility at the time of application;
- Ineligibility;
- Case closure for a minimum of three or twelve months.

BEM 233A, p. 1.

Noncompliance in engaging in WF/JET employment or self-sufficiency related activity requirements generally means doing any of the following without good cause:

- Failing or refusing to:
 - Appear and participate with the [WF/JET] [p]rogram or other employment service provider.
 - Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP [Family Self-Sufficiency Plan] process.
 - Develop a[n] . . . FSSP.
 - Comply with activities assigned on the 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[.]
- 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 for not complying with WF/JET employment or self-sufficiency related activities means "a valid reason for noncompliance . . . that [is] based on factors that are beyond the control of the noncompliant person." BEM 233A, p. 3. A claim of good cause must be verified. BEM 233A, p. 3. Good cause includes the following:

- Employed forty hours
 - The person is working at least 40 hours per week on average and earning at least the State minimum wage.
- Client unfit
 - The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity.
- Illness or injury
 - The client has a debilitating illness or injury, or an immediate family member's illness or injury requires *in-home* care by the client.
- Reasonable accommodation

- The Department, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.
- No child care
 - The client requested child care services from the Department, the Michigan Works Association (MWA), or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable, and within reasonable distance of the client's home or work site.
- No transportation
 - The client requested transportation services from the Department, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.
- Illegal activities
 - The employment involves illegal activities.
- Discrimination
 - The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc.
- Unplanned event or factor
 - Credible information indicates an unplanned event or factor that likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to the following:
 - a. Domestic violence
 - b. Health or safety risk
 - c. Religion
 - d. Homelessness
 - e. Jail
 - f. Hospitalization

- Comparable work
 - The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.
- Long commute
 - Total commuting time exceeds:
 - a. Two hours per day, NOT including time to and from child care facilities, or
 - b. Three hours per day, including time to and from child care facilities.

BEM 233A, pp. 4-5.

The penalty for noncompliance without good cause is closure of the FIP case as follows:

- First occurrence of noncompliance = FIP case closure for not less than three calendar months, unless the client is excused from the noncompliance. See BEM 233A, pp. 8-9.
- Second occurrence of noncompliance = FIP case closure for not less than three calendar months.
- Third and subsequent occurrence of noncompliance = FIP case closure for not less than twelve months.

BEM 233A, p. 6.

Here, it was undisputed that Claimant failed to attend the September 7, 2010, WF/JET program appointment. Claimant stated, however, that she never received the Department's notification of the appointment.

The proper addressing and mailing of a letter creates a legal presumption that it was received. *Stacey v Sankovich*, 19 Mich App 688, 694; 173 NW2d 225 (1969). This presumption may be rebutted by evidence, but whether it was sufficiently rebutted is a question for the trier of fact. *Long-Bell Lumber Co v Nynam*, 145 Mich 477; 108 NW 1019 (1906).

In the present matter, the Department provided sufficient credible evidence establishing that the agency mailed the WF/JET appointment notice to Claimant on August 27, 2010, and that it was sent to her correct mailing address. Claimant, however, failed to offer any evidence reasonably rebutting the presumption that she received the agency's

notice. *Stacey*, 19 Mich App at 694. Thus, her stated reason for missing the September 7, 2010, appointment is unpersuasive.

When the Department determines that a participant in the WF/JET program is noncompliant, that person will not be terminated from the program without first being provided a triage meeting at which the noncompliance and the existence of good cause are discussed. BEM 233A, p. 7. At that time, a good cause determination is made by the agency based on the best available information provided at triage and prior to the negative action date. BEM 233A, p. 7; see also BEM 233A, p. 10.

Here, a triage meeting was scheduled for November 24, 2010; again, Claimant failed to appear.

Claimant testified that she began to attend school full time "sometime before August 2010" for the purpose of obtaining her general equivalency diploma (GED). According to Claimant, she stopped attending school "sometime in February 2011." (Claimant's hearing testimony, July 14, 2011.) Claimant stated that she did receive the triage notice, but was unable to attend due to her school schedule. Claimant testified that she attempted to contact her caseworker numerous times to inform her of the conflict; according to Claimant, each attempt was unsuccessful.

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). Moreover, 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).

Claimant's assertion that she could not attend the scheduled triage meeting because she was attending a full-time GED program did not fall under one of the recognized good cause reasons. See BEM 233A, p. 3-5.

Moreover, Claimant provided no evidence indicating that she met any criteria for deferral from mandatory participation in the WF/JET program. (E.g., there was no indication Claimant was a minor parent – i.e., under age 18 and not emancipated – enrolled full time in high school. See BEM 230A, p. 7.)

And, Claimant provided no evidence or even testimony indicating that she ever informed the Department that she was engaged in a full-time GED program. The credibility of her statements regarding her attendance at such program are therefore somewhat suspect.

Viewing the testimony and other evidence in its entirety, it cannot be reasonably concluded that Claimant met her burden of demonstrating good cause for her noncompliance with assigned WF/JET program requirements for the time period in issue.

Finally, it is noted that Claimant was also deemed noncompliant due to her failure to complete a family automated screening tool (FAST). FAST is a web-based screening tool that must be completed by a FIP client to meet program eligibility. See Bridges Program Glossary (BPG), p. 16. Failure to complete a FAST results in closure of the FIP case due to failure to provide requested verification. BEM 233A, p. 2.

Verification is defined as "documents or other evidence to establish the accuracy of the client's verbal or written statements." BAM 130, p. 1. Verification is usually required at application, redetermination, or for a reported change affecting eligibility or level of benefit. BAM 130, p. 1. A client must cooperate with the Department in determining initial and ongoing eligibility for assistance benefits. BAM 105, p. 5. A client who is able, but demonstrates a refusal to provide requested verifications or take a required action, is subject to penalties, including case closure. BAM 105, p. 5.

Here, Claimant provided no credible basis for her failure to complete the required FAST.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department properly determined that Claimant was noncompliant with WF/JET community service requirements without good cause. Based on this determination, the agency properly terminated and sanctioned Claimant's FIP benefits for at least a three-month period, beginning January 1, 2011.

Furthermore, it is determined that Claimant's FIP case was properly closed because she failed to complete an FAST as required by Department policy.

Therefore, the Department's action in this matter is UPHELD.

It is SO ORDERED.

/s/ _____
Mark Meyer
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/4/11

Date Mailed: 8/4/11

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.

Claimant may appeal this decision and order to the circuit court for the county in which she resides within 30 days of the mailing of this 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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