

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201138470
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: July 21, 2011
Macomb County DHS (20)

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 21, 2011 from Detroit, Michigan. The claimant appeared and testified. 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. Claimant was deferred from JET participation due to a three month post-partum deferral following the birth of Claimant's child.
3. On 5/18/11, DHS scheduled Claimant to attend JET orientation on 5/23/11.
4. Claimant failed to attend JET orientation.
5. DHS rescheduled Claimant to attend JET on 5/31/11 at 8:30 a.m.

6. Claimant attended JET on 5/31/11 at 9:00 a.m. but was refused entry due to her tardiness.
7. Claimant attempted to be rescheduled for orientation but was denied because of her two failures to timely attend JET orientation.
8. At a triage scheduled for 6/9/11, Claimant was determined to lack good cause for her failure to timely attend JET.
9. On an unspecified date, DHS initiated termination of Claimant's FIP benefits effective 7/2011.
10. On 6/9/11, 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 6/2011, 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.*

It was not disputed that Claimant failed to attend a 5/23/11 appointment to attend JET. It was disputed what transpired for Claimant's 5/31/11 appointment. Claimant stated she was 30 minutes late. DHS contended that Claimant was a no-show.

The DHS evidence concerning Claimant's 5/31/11 appointment was mixed. The DHS Hearing Summary made two references to Claimant being late for the 5/31/11 appointment. The references were made as statements of fact ("She was rescheduled... and showed up late"), not as Claimant's assertions (e.g. Claimant claimed to be late).

In support of the DHS assertion that Claimant was a no-show for 5/31/11, DHS relied on triage notes which indicated that Claimant claimed to be late and JET notes which stated that Claimant was a no-show. However, DHS provided no witnesses with first-hand knowledge (i.e. Claimant's JET or DHS assigned worker) to testify concerning the notes.

Though Claimant testified that she was late for the 5/31/11 orientation, Claimant's testimony was imperfect. First, Claimant stated that she suffered a flat tire on 5/30/11. Claimant submitted a receipt for the purchase of a tire to prove that she had

transportation problems. The receipt was dated 7/4/11, several weeks after the orientation date. The undersigned might appreciate if Claimant had testified that's he was unable to afford a tire replacement sooner. Instead, Claimant attempted to clarify that the receipt was misdated and should have been dated 6/4/11. Though Claimant's testimony is not completely unbelievable, it raises questions about the authenticity of the tire receipt. Such questions could raise doubts about Claimant's credibility.

Between Claimant's and DHS' testimony and supporting evidence, there was more evidence that Claimant was late and not a no-show for the 5/31/11 orientation. If nothing else, Claimant at least provided first-hand testimony while DHS did not. It is found Claimant was 30 minutes late for the 5/31/11 orientation. It must be then be determined whether the tardiness may serve as a basis for noncompliance.

Failing or refusing to participate with JET is a circumstance in which noncompliance can be established. DHS contended that Claimant's 30 minute tardiness was sufficient to establish noncompliance. Based on the facts of the present case, the undersigned is not inclined to agree.

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 should also be noted that DHS regulations do not specifically cite tardiness as a basis for noncompliance. The undersigned is hesitant to interpret a 30 minute tardiness as a failure to participate with JET.

The above policy excusing persons from 16 hours/month of JET participation is better applied to ongoing JET participants rather than newly assigned participants, however, the policy still applies in the present case. Claimant only missed 30 minutes of JET participation; this would not be considered noncompliance for an ongoing participant.

Either DHS or the MWA may extend the last day the client has to attend orientation when necessary. BEM 229 at 5. DHS must extend this date directly on MIS before the twentieth day passes. *Id.*

DHS regulations do not specifically limit a client to two opportunities to attend JET. The limit on rescheduling is based on the rescheduling occurring before the 20th day. The 20th day after what is not specifically mentioned but would presumably mean the 20th day following the initial date of JET referral. DHS presented a notice of JET appointment

dated 5/18/11. The 20th day following 5/18/11 would be 6/7/11. Claimant credibly stated that she immediately tried to reschedule an appointment for JET after she was refused entry upon being late for the 5/31/11 orientation. Based on the 20 day timeline a client has to reschedule JET orientation, Claimant requested a new orientation date within a timely manner. Based on the aforementioned reasons, it is found that Claimant was not noncompliant with JET participation.

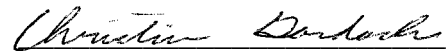
It was not disputed that Claimant's FIP benefit termination was based on an alleged noncompliance with JET participation. As it is found that Claimant was not non-compliant with JET participation, it is found that DHS erred in terminating Claimant's FIP benefits.

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 7/2011. It is ordered that DHS shall:

1. reinstate Claimant's FIP benefits effective 7/2011;
2. supplement Claimant for any benefits lost as a result of the improper finding of noncompliance; and
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 26, 2011

Date Mailed: July 26, 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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