

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

IN THE MATTER OF:



Reg. No: 2011-39671



Clare County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing dated June 24, 2011. After due notice, a telephone hearing was held on August 25, 2011. Claimant personally appeared and provided testimony.

ISSUE

Did the department properly terminate and sanction Claimant's Food Assistance Program (FAP) benefits and Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements?

FINDINGS OF FACT

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

1. At all relevant times, Claimant was an active FAP and FIP recipient and was a mandatory JET participant. (Department Exhibit 1, Hearing Summary).
2. On January 31, 2011, Claimant attended JET orientation. (Department Exhibits 18 & 19).
3. On February 7, 2011, Claimant left a voicemail message with her WF/JET worker and indicated she was unable to come into the office because she had a job interview. (Department Exhibits 18 & 19).

4. On February 10, 2011, Claimant met with her WF/JET worker and reported that she was hired at K-Mart to work 20-25 hours per week. At that point, Claimant was assigned to attend WF/JET workshops and job search for 20 hours per week beginning on February 14, 2011. (Department Exhibits 18 & 19).
5. As of February 15, 2011, Claimant had not attended any workshops. The JET office mailed Claimant a letter which indicated she was required to attend workshops on February 22, 2011. (Department Exhibits 18 & 19).
6. Claimant attended workshops on February 22, 2011. (Department Exhibits 18 & 19).
7. Claimant did not provide proof of employment or that she has been complying with JET program hourly requirements. (Department Exhibits 18 & 19). On April 8, 2011, the department mailed Claimant a Notice of Noncompliance (DHS-2444) form which scheduled a Triage for April 19, 2011. (Department Exhibit 22).
8. Claimant attended the telephone Triage on April 21, 2011 and indicated that she was in lower-Michigan with car trouble. Claimant also indicated that in Mid-March, 2011, the house where she resided in Clare County caught fire and that she had relocated to Wayne County. (Department Exhibits 18 & 19). The department later learned that Claimant had been living at a hotel in Clare County, which had been paid for by the homeowner's insurance company. Reportedly, the insurance company stopped paying and forced Claimant to leave the hotel and Claimant decided to live with her mother in Dearborn. (Department Exhibit 18). No good cause was found.
9. On April 22, 2011, the department mailed the claimant a Notice of Case Action (DHS-1605) which closed her FIP and FAP for failure to attend required JET-related activity. (Department Exhibits 11-13). This is Claimant's first FAP noncompliance, but her second FIP noncompliance. (Department Exhibits 11-14).
10. Claimant requested a hearing on June 24, 2011. (Request for a Hearing).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The department's stated goal of the Food Assistance Program (FAP) is "to ensure sound nutrition among children and adults." BEM 233B. In addition, the goal of the department's employment-related policies for FAP households is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training. BEM 233B.

Policy provides that non-deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. BEM 233B. However, unlike cash benefits, which are tied to participation in the Jobs, Education and Training (JET) program, there are no hourly work participation requirements for the Food Assistance Program. BEM 233B. In order to receive FAP benefits, non-deferred adults must comply with the following work requirements:

Non-deferred adults who are already working may not do any of the following:

- Voluntarily quit a job of 30 hours or more per week without good cause.
- Voluntarily reduce hours of employment below 30 hours per week without good cause.
- Be fired from a job for misconduct or absenteeism.

However, if the job quit, reduction in hours or firing occurred more than 30 days prior to the application date, no penalty applies. BEM 233B.

Non-deferred adults who are not working or are working less than 30 hours per week must:

- Accept a bona-fide offer of employment.
- Participate in activities required to receive unemployment benefits if the client has applied for or is receiving unemployment benefits. BEM 233B.

If a client is an applicant or recipient of unemployment benefits, they must follow through with the unemployment benefits program's procedures and requirements. BEM 233B. This work requirement does not apply to a client who is clearly not eligible for unemployment benefits. BEM 233B. The department cannot require a client to apply for unemployment benefits in order to receive FAP. BEM 233B.

FAP clients are disqualified for noncompliance if the applicant or recipient is neither deferred (see deferrals in this item), nor noncompliant with one of the FAP work requirements listed above. BEM 233B.

In order to provide all FAP adults with the opportunity to pursue employment and/or education and training that will lead to self-sufficiency, the department may encourage

FAP applicants and recipients to pursue employment services such as job search, employment counseling, education and training, etc. BEM 233B.

Workforce Investment Act (WIA) services may be available to all adults in FAP households. BEM 233B. Other programs, such as the non-cash recipient program may be available to employed, underemployed, or recently employed adults residing in a household with a child under 18. BEM 233B. Every local Michigan Works! Agency throughout Michigan operates both of these programs and may provide additional employment and training services. BEM 233B. However, local variations, restrictions and/or policies may apply. BEM 233B.

FAP program applicants or recipients will not be disqualified for failing to comply with WIA services or any other employment and training component the department suggests. BEM 233B.

The department is to determine each group member's participation requirement at:

- Application.
- Redetermination.
- Change in circumstance that might affect the person's participation requirement; see BAM 105 for changes in circumstances that are required to be reported for the FAP. BEM 233B.

The department is required to keep the client informed regarding the FAP program. Policy requires the department worker to explain all of the following to FAP clients:

- FAP work requirements.
- Rights and responsibilities of non-deferred adults in FAP households.
- Consequences of their failure to comply.
- Right of deferred persons to participate.
- Reporting requirements.
- What constitutes good cause for noncompliance; see BEM 233B.

Clients meeting one of the criteria below are temporarily deferred from employment-related activities.

The department will defer a person who is:

- Under age 16 or at least age 60.
- A16- or 17-year old who is not the grantee.
- A grantee age 16 or 17 who:
 - Lives with a parent or person in that role.

- Attends school at least half time.
- Is enrolled in an employment/training program at least half time. BEM 233B. See BEM 240 and BEM 245 for verification requirements.

The department will defer one person who personally provides care for a child under age six who is in the FAP group. BEM 233B. Defer one person who personally provides care for a disabled member of his/her own FAP group. BEM 233B. In order to verify, the department will use a statement from an MD/DO that the client's presence is needed to assist the household member with minimum daily activities of living. BEM 233B.

The department will defer persons incapacitated due to injury, physical illness or mental illness. BEM 233B. A reason for deferral will be verified only if it is not obvious and the information provided is questionable (unclear, inconsistent or incomplete). Sources that may be used to verify questionable information are:

- SSI/RSDI/MA approval or receipt based on disability or blindness. For SSI and RSDI, use one of the sources referenced in FIP policy, Care of Disabled Spouse or Disabled Child in BEM 230A.
- An evaluation signed by a fully licensed psychologist that the client has an IQ of 59 or less.
- Statement from an MD/DO that the person is unable to work. Any medical evidence submitted by a Physician's Assistant must be cosigned by an MD/DO.
- The DHS-54A, Medical Needs; DHS-49, Medical Examination Report; DHS-49-D, Psychiatric/Psychological Examination Report; or another written statement is acceptable. BEM 233B.

A student enrolled up to half time in any recognized school, training program or institution of higher education meets the employment-related activities requirement. BEM 233B. This includes persons attending school for GED or adult high school completion. BEM 233B. A person enrolled in a post-secondary education program may be in student status, as defined in BEM 245, STUDENT STATUS. Employment Persons employed, self-employed or in work study an average of 30 hours or more per week over the benefit period or earning on average the federal minimum wage times 30 hours per week are not required to participate in any further employment-related activities. This includes migrant or seasonal farm workers with an employer or crew chief contract/agreement to begin work within 30 days. BEM 233B.

Pregnant women, beginning the seventh month of pregnancy or earlier if a pregnancy complication is medically documented, will be deferred. BEM 233B. Confirmation by an MD, DO, certified nurse-midwife, ob-gyn nurse practitioner or ob-gyn clinical nurse

specialist which must include an expected date of delivery. BEM 233B. The DHS-49, Medical Examination Report; DHS-54A, Medical Needs; or another written statement is acceptable. BEM 233B.

Policy permits the department to defer applicants who apply for both SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time. BEM 233B.

Active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation will be deferred under policy. BEM 233B. This does not include AA or NA group meetings. BEM 233B. An applicant for or recipient of unemployment benefits will be deferred. BEM 233B. This includes a person whose unemployment benefits application denial is being appealed. BEM 233B.

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.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

With regard to FIP, the department requires its clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 233 A. The department's focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. BEM 233A. But there are consequences for a client who refuses to participate, without good cause. BEM 233A.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency-related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A. The department's stated goal is to bring the client into compliance. BEM 233A. The department recognizes that noncompliance may be an indicator of possible disabilities. BEM 233A. In this regard, the department does explore whether the client is confronted by any barriers. BEM 233A.

With regard to FIP, a Work Eligible Individual (WEI), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- . Failing or refusing to:

- .. Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
- .. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
- .. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
- .. Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP) or PRPFC.
- .. Appear for a scheduled appointment or meeting related to assigned activities.
- .. Provide legitimate documentation of work participation.
- .. Participate in employment and/or self-sufficiency-related activities.
- .. Accept a job referral.
- .. Complete a job application.
- .. 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. BEM 233A, pp. 1-2.

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. BEM 233A. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A.

Per department policy, good cause includes the following:

- . The person is working at least 40 hours per week on average and earning at least state minimum wage.
- . 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. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A.
- . The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client. BEM 233A.
- . The DHS, 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. BEM 233A, pp. 3-4.
- . The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site. BEM 233A.
- . The care is appropriate to the child's age, disabilities and other conditions. BEM 233A.
- . The total commuting time to and from work and child care facilities does not exceed three hours per day. BEM 233A.
- . The provider meets applicable state and local standards. Also, providers (e.g., relatives) who are NOT registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. See PEM 704.

- . The child care is provided at the rate of payment or reimbursement offered by DHS. BEM 233A.
- . The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. BEM 233A.
- . The employment involves illegal activities. BEM 233A.
- . The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc. BEM 233A, p. 4.
- . Credible information indicates an unplanned event or factor which 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:
 - . Domestic violence.
 - . Health or safety risk.
 - . Religion.
 - . Homelessness.
 - . Jail.
 - . Hospitalization. BEM 233A.
- . The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit. BEM 233A.
- . The client has a long commute where the total commuting time exceeds:
 - . Two hours per day, NOT including time to and from child care facilities, or
 - . Three hours per day, including time to and from child care facilities. BEM 233A, pp.4-5.

The client is eligible for EFIP unless the noncompliance is because he or she quit a job, was fired or voluntarily reduced hours of employment. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for 3 calendar months unless the client is excused from the noncompliance as noted in “First Case Noncompliance Without Loss of Benefits” below.
- . For the second occurrence on the FIP case, close the FIP for 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

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. BEM 233A. The department policy requires the department to coordinate a local process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the department requires its staff to offer a phone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A. When a phone triage is conducted for a first noncompliance and the client agrees to comply, the department shall complete the First Noncompliance Letter (DHS-754). BEM 233A.

The department must determine good cause based on the best information available during the triage and prior to the negative action date. BEM 233A. Good cause may be verified by information already on file with DHS or MWA. BEM 233A.

If the FIS, JET case manager, or MRS counselor do not agree as to whether “good cause” exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement. BEM 233A.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking. BEM 233A. Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. BEM 233A. This does not include applicants. BEM 233A, p. 7.

If the client establishes good cause within the negative action period, the department shall impose a penalty. BEM 233A. The department must send the client back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

If the client does not provide a good cause reason within the negative action period, the department is required to determine good cause based on the best information available. BEM 233A. If no good cause exists, the department will allow the case to close. BEM 233A. If good cause is determined to exist, the department should delete the negative action. BEM 233A.

- . The department will disqualify a FAP group member for noncompliance when:
- . The client was active both FIP and FAP on the date of the FIP noncompliance, and
- . The client did not comply with FIP employment requirements, and
- . The client is not deferred from FAP work requirements (see DEFERRALS in BEM 230B), and the client did not have good cause for the noncompliance. BEM 233B, p. 1.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-related activities, providing legitimate documentation of work participation, etc. BEM 233A.

This Administrative Law Judge finds that Claimant was noncompliant with WF/JET program requirements because she did not provide proof of employment and related documentation. Claimant claimed that she had good cause and then provided several alternate reasons for her noncompliance. Most notably, Claimant testified that she did not attend JET because she could not obtain day care as the hotel where she resided did not allow any visitors or guests to watch her children. However, this statement is simply not credible. Moreover, Claimant did not make this argument during Triage or at any time prior to the hearing in this matter. Claimant simply did not comply with JET requirements and did not provide a consistent, coherent reason to explain her noncompliance.

Good cause is defined as 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. BEM 233A. The evidence here shows that Claimant has not provided any good cause for her noncompliance.

Department policy indicates that a noncompliant group member will be sanctioned from the FAP group for the FIP noncompliance if they are not deferred from FAP work requirements. BEM 233B. Here, Claimant is the noncompliant group member who is subject to the FAP sanction and there is no evidence to show a basis for a FAP deferral.

