

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201145295
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: August 25, 2011
Wayne County DHS (49)

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 August 25, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Michigan Works! Agency Representative, 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 an ongoing JET participant.
3. On an unspecified date in late 3/2011, Claimant stopped attending JET.
4. Claimant continued to be absent from JET until at least 5/13/2011.
5. On an unspecified date, DHS scheduled Claimant for a triage to be held on 6/16/11.

6. Claimant asserted that she had good cause for a failure to attend JET because of issues concerning homelessness and a lack of child care.
7. DHS determined Claimant had no good cause for the absence from JET.
8. On an unspecified date, DHS initiated termination of Claimant's FIP benefits effective 7/2011 due to Claimant's alleged noncompliance with JET participation.
9. On 7/26/11, 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.*

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.*

In the present case, it was not disputed that Claimant stopped attending JET on some unspecified date toward the end of 3/2011. It was also not disputed that the lack of attendance continued until 5/13//2011, when MWA referred Claimant's case for a triage.

Claimant testified that she stopped attending JET in 3/2011 because the home where she resided was being foreclosed forcing Claimant to seek a new permanent residence. Claimant also testified that she advised her DHS specialist of this circumstance and her intention to stop attending JET. Claimant also testified that the DHS specialist failed to return her calls. Concerning the issue of whether Claimant was noncompliant because she told her specialist that she was suspending her JET participation, Claimant presented an unpersuasive argument. Clients do not get to unilaterally decide to suspend their JET participation until JET or MWA is able to respond to the client's inquiry. Even accepting Claimant's testimony as accurate, Claimant cannot take refuge by claiming that it was the fault of DHS for not telling her to return to JET after Claimant stopped attending.

The precise amount of days that Claimant stopped attending JET is not known. It is known that Claimant was absent for at least all of 4/2011, a part of 3/2011 and 13 days of 5/2011. This time period is sufficient a sufficient basis to find noncompliance.

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.

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.*

Claimant made two arguments concerning good cause. Claimant stated she stopped attending due to an unplanned event of having her residence foreclosed, and a lack of day care.

Claimant testified that she was living in a residence that the owner was losing due to foreclosure. Claimant testified she received notice of the foreclosure in 3/2011. Claimant testified that she and her two children subsequently moved in with her sister.

Claimant testified that living with her sister was temporary and she intended to find a more permanent residence and did so in 5/2011. Claimant continually referred to living with her sister as being homeless. Though it can be appreciated that Claimant needed some amount of time to find a more stable residence, it was not established why Claimant needed six weeks to do so. Some deference should be given to Claimant's decision to suspend JET participation due to the pending eviction. The facts established that Claimant quickly resolved her immediate concern about homelessness by moving in with a family member. Some amount of absence from JET could also be justified for the need to find a new residence. However, a six week absence from JET participation can not be justified on the provided facts.

Claimant also stated that while living in the residence facing foreclosure, she was living with her brother who was the day care provider for her one and three year old children. Claimant stated that when she was forced to move in 3/2011, her brother was also forced to move; thus, Claimant lost her day care provider and this inhibited her ability to attend JET. Accepting Claimant's testimony as accurate, it was never clarified why Claimant did not apply for Child Development and Care (CDC) benefits or seek a different CDC provider. A change in CDC providers may be an excuse for a short absence from JET but not the six week absence that Claimant was absent from JET.

Claimant's concerns about homelessness and losing her CDC provider established good cause for part of her absence from JET. Granting Claimant three weeks of justified absence from JET still leaves at least three weeks of unjustified absence from JET. This period is sufficient to establish noncompliance without good cause. It is found that Claimant did not have good cause for part of her JET absence and that noncompliance with JET participation was established.

Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. It is found that DHS properly terminated Claimant's FIP benefits based on Claimant's noncompliance with JET participation.

DECISION AND ORDER

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 7/2011. The actions taken by DHS are AFFIRMED.

Christian Gardocki

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

Date Signed: August 30, 2011

Date Mailed: August 30, 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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