

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

IN THE MATTER OF:



Reg. No. 201148411
Issue No. 1038
Case No. [REDACTED]
Hearing Date: September 29, 2011
District: Wayne County DHS (57)

ADMINISTRATIVE LAW JUDGE: Andrea J. Bradley

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and Michigan Compiled Laws 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was conducted from Detroit, Michigan on September 29, 2011. The Claimant, [REDACTED] appeared and testified. Ms. Gordon, Family Independence Manager, Ms. Walton, Case Worker, and Ms. Ruff, Case Worker for Work First, appeared and testified on behalf of the Department of Human Services (Department).

ISSUE

Whether the Department properly closed Claimant's Family Independence Program (FIP) case due to Claimant's failure to comply with Jobs, Education and Training (JET) program requirements.

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 recipient of FIP benefits.
2. As a FIP recipient, the Claimant was required to participate in employment-related activities.
3. To fulfill this requirement the Claimant was assigned to the Jobs, Education and Training (JET) program.

4. As a part of the JET program, the Claimant was required to participate in the JET program for twenty (20) hours per week by performing job searches at Midwest Careers.
5. On June 28, 2011, the Department sent Claimant a Notice of Noncompliance concerning her failure to participate in the required Jobs, Education and Training (JET) program.
6. The June 28, 2011, Notice of Noncompliance informed Claimant that the noncompliance was Claimant's first noncompliance offense and scheduled a triage on July 7, 2011.
7. Claimant did not participate in the triage.
8. Since the Claimant failed to appear for the triage, the Department closed the Claimant's case without making a good cause determination.
9. On July 8, 2011, the Department sent Claimant a Notice of Case Action, closing her FIP case for a three-month period from August 1, 2011 to October 31, 2011, based on Claimant's failure to participate in job-related activities without good cause.
10. On August 10, 2011, Claimant timely requested a hearing to dispute the Department's action closing her FIP case for three months.

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.* The Department of Human Services (DHS or Department), formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq* and Michigan Administrative Code Rules 400.3101-3131. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Table (RFT).

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A. All Work Eligible Individuals ("WEI") are required to participate in the development of a Family Self-Sufficiency Plan ("FSSP") unless good cause exists. BEM 228 As a condition of eligibility, all WEIs must engage in employment and/or self-sufficiency related activities. BEM 233A The WEI is considered non-compliant for failing or refusing to appear and participate with the Jobs, Education, and Training Program (JET) or other employment service provider. BEM 233A 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 Failure to comply without good cause results in FIP closure. BEM 233A The first and second occurrences of non-compliance results in a 3 month FIP closure. BEM 233A The third occurrence results in a 12 month sanction.

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 In processing a FIP closure, the Department is required to send the client a notice of non-compliance, DHS-2444, which must include the date(s) of the non-compliance; the reason the client was determined to be non-compliant; and the penalty duration. BEM 233A Additionally, a triage must be held within the negative action period. BEM 233A A good cause determination is made during the triage and prior to the negative action effective date. BEM 233A. The Department is required to make a determination as to whether Claimant had good cause for her noncompliance with the JET program based on the best information available to it. BEM 233A. Good cause may be verified by information already on file with DHS or the work participation program. Good cause must be considered even if the client does not attend. BEM 233A.

In this case, the Department testified that the Claimant was assigned to JET beginning April 25, 2011 and that during that week the Claimant performed 27 of the required 30 hours. The Department also testified that the following week, the week of May 2, 2011, the Claimant performed 10.3 of the required 30 hours. The Claimant did not dispute the time completed as set forth in the Department's testimony. The Claimant did however, offer testimony as to her good cause for failing to perform the required hours. Specifically, the Claimant testified that she had problems with her shelter the week of April 25, 2011 and had a community service obligation with the court, which she chose to fulfill the week of [REDACTED]. The Claimant did not provide credible testimony as to her communication of these issues to the Department at the time of the conflict. Further, the Claimant failed to appear for the triage on July 7, 2011 to present her good cause for noncompliance. With respect to her failure to appear at the triage, the Claimant testified that she was employed with a commercial cleaning company at the time of the triage, but again, she did not provide credible testimony as to her communication of this conflict to the Department prior to the triage.

Despite Claimant's failure to participate in the triage, the Department is nevertheless required to conduct the triage in claimant's absence and make a determination as to whether Claimant had good cause for her noncompliance with the JET program based on the best information available to it. BEM 233A. In this case, based on the Department's testimony, it appears that the Department properly appeared to conduct a triage but the Claimant failed to appear. The Department testified that it made a finding of no good cause for noncompliance with JET, however, the determination of no good cause was not related to her failure to comply with the JET program using the best information available but instead based solely on Claimant's failure to attend the triage. To that end, the Department did not act in accordance with Department policy when it made a conclusion regarding good cause based on Claimant's absence at the triage.

Notwithstanding the fact that the Department's finding of no good cause was not in accordance with Department policy, the Department's error will be deemed harmless if the Department could have properly concluded that the Claimant lacked good cause for


her noncompliance. In this case, there was no dispute that the Claimant failed to comply with the JET requirements because she did not perform the 30 hours per week as required. Moreover, the Claimant failed to present credible testimony regarding any alleged good cause for noncompliance. For instance, the Claimant testified that during the week of [REDACTED], she performed 8 hours of community service at Focus Hope. The Claimant later contradicted this statement and testified that she was working for a commercial cleaning company, but could not specify the hours worked. At another point, the Claimant testified that she began working for the commercial cleaning company in [REDACTED] and that is why she could not attend the triage. It is unclear if the Claimant was working, volunteering, or doing neither. Moreover, the Claimant did not communicate her alleged employment to the Department. What is clear is that, based on the best information available to the Department at the time of the triage, and subsequent case closure, the Department could properly have determined noncompliance and no good cause for the noncompliance. Under these facts, the Department acted in accordance with Department policy when it terminated the Claimant's FIP benefits for three months and reduced the Claimant's FAP benefits based on the sanction. Accordingly, the action taken by the Department is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's closure of Claimant's FIP case for three months for noncompliance with her JET obligations is in accordance with Department policy.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.


 Andrea J. Bradley
 Administrative Law Judge
 For Maura Corrigan, Director
 Department of Human Services

Date Signed: 10/06/11

Date Mailed: 10/10/11

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.

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.

AJB/dj

cc:

