

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-7444
Issue No.: 1038/1005
Case No.: [REDACTED]
Hearing Date: December 15, 2010
Wayne County DHS (43)

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 December 15, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Specialist, appeared and testified.

ISSUES

1. Whether DHS properly terminated Claimant's Food Assistance Program (FAP), Family Independence Program (FIP) and Medical Assistance (MA) benefits for an alleged failure by Claimant to verify employment.
2. Whether DHS may properly terminate Claimant's FIP benefits following an alleged failure by Claimant and her spouse to participate with Jobs, Education and Training (JET).

FINDINGS OF FACT

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

1. Claimant was an ongoing FIP, FAP and MA benefit recipient.
2. DHS gave Claimant an 8/18/10 appointment (Exhibit 2) to attend JET.
3. Claimant missed the 8/18/10 appointment with JET for unspecified reasons.
4. DHS gave Claimant and her spouse a 9/29/10 appointment to attend JET.

5. Claimant states she attended the 9/29/10 appointment but failed to provide any verification of her attendance.
6. The JET sign-in sheet (Exhibit 5) from 9/29/10 failed to include Claimant or her spouse's signature verifying their attendance.
7. On 10/14/10, DHS mailed Claimant a Notice of Non-Compliance due to Claimant's failure to attend JET.
8. On 10/25/10, a triage was held between JET, Claimant and DHS and it was determined that Claimant lacked good cause for her lack of attendance.
9. On 10/25/10, DHS initiated termination of Claimant's FIP benefits based on noncompliance with JET participation.
10. On 10/25/10, Claimant's spouse reported to a DHS manager that he and Claimant were employed and had good cause for not participating with JET.
11. Based on Claimant's spouse's reporting of employment, DHS stopped the pending termination of FIP benefits and mailed Claimant a Verification Checklist (Exhibit 1) requesting verification of Claimant and her spouse's employment income.
12. DHS gave Claimant until 11/6/10 to verify the employment income.
13. Prior to 11/6/10, DHS learned that Claimant and her spouse were not employed.
14. On an unspecified date following 11/6/10, DHS initiated closure of Claimant's FIP, FAP and MA benefits based on a failure by Claimant to verify employment income.
15. On 11/16/10, Claimant requested a hearing disputing the termination of FAP, MA and FIP benefits; Claimant also requested a hearing on 8/11/10 concerning a separate issue for FAP benefits which Claimant states is currently resolved.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

For FIP and FAP benefits, DHS is to verify income that decreases or stops. DHS does not need to verify starting and increasing income unless income change information is unclear, inconsistent or questionable. BEM 500 at 9. DHS is to verify all non-excluded income when program policy requires a change be budgeted. BEM 500 at 9.

In the present case, DHS terminated Claimant's FIP, FAP and MA benefits based on an alleged failure by Claimant to verify employment income. Claimant concedes not verifying the reported income because the income did not exist. More importantly, DHS knew the income did not exist when Claimant's FIP, FAP and MA benefits were terminated. DHS had received verification from Claimant's purported employer that there was no employment relationship between the employer and Claimant or the employer and Claimant's spouse. DHS cannot terminate Claimant's benefits based on Claimant's failure to verify information which was already verified. It is found that DHS improperly terminated Claimant's FIP, MA and FAP benefits.

In most circumstances, no additional findings would be necessary. The present case involves an unusual circumstance where DHS originally terminated Claimant's FIP benefits based on a failure by Claimant and her spouse to be compliant with JET participation. DHS only cancelled the negative action because of a reporting of employment by Claimant's spouse; as DHS learned, there was no such employment relationship. The undersigned is not inclined to allow Claimant to circumvent a FIP

benefit termination based on JET noncompliance by reporting a non-existent employment relationship. The undersigned is uncertain if Claimant's spouse only reported employment to DHS in an attempt to avoid a noncompliance disqualification. Nevertheless, the issue of whether Claimant was compliant with JET should be addressed by the undersigned as it is sufficiently tied to the termination based on verifications.

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.

DHS asserts that Claimant was given two opportunities to begin JET participation and Claimant failed to attend on both occasions. Claimant conceded that she was given an 8/18/10 appointment but did not attend. DHS indicated that Claimant was resent to JET on 9/29/10 and that Claimant and her spouse again did not attend JET.

Claimant testified that she and her spouse attended JET on 9/29/10. Claimant also indicated that she did not sign an attendance sheet so there is no record of her attendance. Claimant further stated that JET informed her that neither she nor her husband needed to attend because of their work study participation. Claimant was unable to identify the name of the JET worker with which she spoke or why she was not required to sign-in.

The undersigned has difficulty in accepting Claimant's testimony as accurate; there was simply no evidence to support Claimant's testimony. Sign-in sheets are generally required for anybody who attends JET; it is difficult to believe that Claimant could have attended JET without signing-in first. There was also no record of JET approving Claimant or her spouse's work study time as JET participation. A triage was conducted and DHS had no recollection of Claimant asserting the issue at the triage. Claimant's inability to even provide a name of a JET representative makes it seem improbable that Claimant and her spouse attended JET on 9/29/10.

Claimant admits that her work study ended in late 9/2010. It also does not seem reasonable that JET would approve Claimant's work study as JET participation time on 9/29/10 when the work study had ended or was about to end. It is found that Claimant and her spouse were noncompliant with JET participation by failing to attend JET.

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 did not assert good cause for failing to appear with JET, only that she attended JET and was approved by JET to complete her work study. The undersigned is not inclined to consider the work study as a basis for good cause when the work study had already been completed or was about to be completed. Further, it is Claimant's responsibility to have JET approve the work study as JET participation hours; it has already been found that Claimant made no such efforts. It is found that Claimant lacked good cause for her failure to attend JET.

Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. The first and second occurrences of non-compliance results in a 3 month FIP closure. *Id*. The third occurrence results in a 12 month sanction. *Id*.

DHS established that all needed procedures were met in finding that Claimant was noncompliant with JET participation. Though the most recent DHS termination of FIP benefits involved a closure based on a failure to verify information, the undersigned is willing to accept the prior reason as an appropriate basis for FIP benefit termination. The below decision and order reflects this finding.

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 MA and FAP benefits. It is ordered that DHS reinstate Claimant's FAP and MA benefits to the amounts received prior to the termination and to supplement Claimant for any benefits not received as a result of the improper termination. The actions taken by DHS are PARTIALLY REVERSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly attempted to terminate Claimant's FIP benefits due to noncompliance with JET participation. The actions taken by DHS are PARTIALLY AFFIRMED.



Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/27/2010

Date Mailed: 12/27/2010

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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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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