

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

IN THE MATTER OF:



Reg. No.: 2011-8463
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: January 5, 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 January 5, 2011. 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 based on excessive absences from Jobs, Education and Training (JET) program.

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 benefit recipient.
2. Claimant had a 20 hour/week participation requirement with JET.
3. DHS alleges that Claimant was absent the following dates, hours and reasons:
 - 8/13/10 for one hour due to missing homework
 - 8/20/10 for one hour due to incomplete job log
 - 8/23/10 for four hours due to no job log
 - 8/24/10 for six hours due to no job log
 - 8/25/10 for three hours due to absence
 - 8/30/10 for six hours due to absence

4. Claimant submitted job logs for 8/23/10 and 8/24/10 but allegedly submitted the logs late.
5. DHS provided no first-hand evidence establishing that Claimant's 8/23/10 and 8/24/10 were submitted late.
6. On 9/16/10, DHS mailed Claimant a Notice of Noncompliance (Exhibit 1) scheduling a triage for 9/22/10.
7. Following the triage, DHS determined that Claimant lacked good cause for her absences (see Exhibit 3).
8. On 10/13/10, DHS mailed Claimant a Notice of Case Action informing Claimant of a FIP benefit termination based on noncompliance with JET participation.
9. On 10/18/10, Claimant requested a hearing disputing the FIP benefit termination.

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), formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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*. The undersigned is inclined to consider 16 hours of absences within a calendar month to be sufficient evidence of a client’s failure to participate with JET.

In the present case, DHS contends that Claimant’s 8/2010 JET absences exceeded 16 hours for 8/2010. DHS had no first-hand knowledge of Claimant’s absences but testified from notes (Exhibit 2) made by persons employed with JET.

Some testimony was provided by DHS concerning how absences are calculated but not enough to identify how each absence was calculated. For example, it was alleged that Claimant failed to submit a job log on 8/23/10 and 8/24/10. The undersigned has no idea how Claimant’s 8/23/10 failure results in a four absence and Claimant’s 8/24/10 failure resulted in a six hour absence. DHS would be immensely served by insuring the appearance of JET personnel at administrative hearings to provide testimony which would clarify such details.

A copy of Claimant’s Job Search Log (Exhibit 5) indicated that Claimant submitted a job log on 8/23/10 and 8/24/10; this contradicts JET case notes which indicated no log was submitted. The job log indicated that Claimant contacted three employers on 8/23/10 and four employers on 8/24/10. The job log also contains documentation from JET crossing out the employers with the statement, “late no credit” written in large letters across the days’ listing. DHS was unable to provide any first-hand evidence explaining why Claimant’s log was unacceptable. Information that would be important to know would include how late Claimant’s log was and details concerning the JET policy concerning job logs that are submitted in a tardy fashion.

Based on the lack of clarifying evidence, the undersigned is not inclined to find that DHS failed to establish that Claimant was noncompliant with JET participation on 8/23/10 and 8/24/10. Removing those days’ absences from Claimant’s 8/2010 total would reduce Claimant’s 8/2010 absences to eleven hours. This amount is found to be insufficient to establish noncompliance by Claimant with JET participation because it is less than 16 hours in a calendar month. Though Claimant’s actual participation was far from impressive and could reasonably be found to be noncompliant, there is simply insufficient information to make that finding in the present case. It is found that DHS failed to establish noncompliance with JET participation by Claimant.

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. It is ordered that DHS reinstate Claimant's FIP benefits effective 11/2010, supplement Claimant for any benefits lost as a result of the improper finding of noncompliance and to remove any disqualification from Claimant's disqualification history as a result of the improper finding. The actions taken by DHS are REVERSED.

Christian Gardocki

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

Date Signed: 1/25/2011

Date Mailed: 1/25/2011

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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