

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

IN THE MATTER OF: Reg.



No: 2011-10803
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
February 24, 2011
Newaygo County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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. After due notice, a telephone hearing was held on February 24, 2011. The claimant, Deanna Burns, appeared and provided testimony.

ISSUE

Did the department properly terminate and sanction the claimant's 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. Claimant was a mandatory WF/JET participant.
2. On October 25, 2010, the department mailed Claimant a Notice of Noncompliance (DHS 2444) for her failure to participate as required in employment and/or self-sufficiency related activities. The Notice scheduled a triage appointment for November 3, 2010, at 9:00 a.m. (Department Exhibits 10-11).
3. Claimant did not attend the November 3, 2010, triage appointment. (Department Exhibit 2).

4. On November 5, 2010, the department concluded that good cause had been established for Claimant's noncompliance because the department did not have Claimant's correct address for purposes of mailing Claimant her requested daycare assistance paperwork, without which Claimant was unable to participate in job search activities. (Department Exhibit 1).
5. In letters dated November 5, 2010, and sent to all three addresses provided by Claimant, the department provided Claimant with the requested daycare assistance paperwork and advised her of her required attendance at Michigan Works on November 15, 2010 in order to avoid being placed back in triage. (Department Exhibits 12-14).
6. Claimant did not attend the November 15, 2010, Michigan Works appointment. (Department Exhibit 1).
7. On November 15, 2010, following a telephone triage appointment conducted with Claimant, the department determined that good cause did not exist for Claimant's failure to comply with employment and/or self-sufficiency related activities. (Department Exhibits 15-16).
8. On November 17, 2010, Michigan Works mailed Claimant a Notice of Termination from its program due to her failure to attend Job Club on November 15, 2010 as she had been assigned. (Department Exhibit 17).
9. On November 17, 2010, the department mailed Claimant a Notice of Noncompliance (DHS 2444) for her failure to participate as required in employment and/or self-sufficiency related activities. The Notice scheduled a triage appointment for November 24, 2010 at 9:00 a.m. (Department Exhibits 18-19).
10. Claimant did not attend the November 24, 2010, triage appointment.
11. On November 24, 2010, the department mailed Claimant a Notice of Case Action (DHS 1605) advising her that her FIP case would be closed and sanctioned for a 12-month period for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibits 20-21).
12. Claimant submitted a hearing request on December 5, 2010, protesting the closure of her FIP case.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R

400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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), Reference Table Manual (RTM), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by the department when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments are covered by the JET case manager when a mandatory JET participant is referred at application. BEM 229.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth (DELEG) through the Michigan Works Agencies (MWAs). 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. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

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).
- .. Provide legitimate documentation of work participation.
- .. Appear for a scheduled appointment or meeting related to assigned activities.
- .. 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.

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. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled

triage meeting, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period.

The department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. 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. A claim of good cause must be verified and documented for member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. BEM 233A.

Good cause should be determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A.

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

- . For the first occurrence on the FIP case, close the FIP for not less than 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 not less than 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

In this case, Claimant was required to participate in the JET/Work First program as a condition of receiving her FIP benefits. On November 17, 2010, the department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities. At the hearing, Claimant testified that she had in fact performed the requisite 20-hour per week job search activities but was unable to

turn in her logs because she lacked transportation. However, the department representative and the WF/JET case notes indicate that Claimant was familiar with and, as recently as August 2010, had used the transportation service offered by WF/JET. Claimant also testified that she was unable to contact the department for her November 24, 2010 triage appointment and explain her noncompliance because she had no telephone service. Yet, Claimant admits she made no effort to reach the department via a payphone or by using someone else's telephone, such as that of her mother, whose telephone, according to the department, had been used in the past by the department to reach Claimant.

The Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause for her failure to participate as required in employment and/or self-sufficiency related activities and the department properly closed Claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed Claimant's FIP case for non-compliance with WF/JET requirements and the 12-month sanction is AFFIRMED.

It is SO ORDERED.

___/s/

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 2, 2011

Date Mailed: March 3, 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 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.

SDS/alc

cc:

