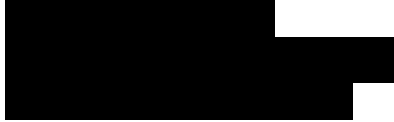


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-11500
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: February 14, 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 February 14, 2011. The claimant 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 had a 32 hour/week attendance requirement with JET.
3. Claimant began attendance with JET on 8/2/10
4. Claimant missed the following dates and hours with JET:
 - 3 hours on 8/3/10 (absence)
 - 1 hour on 8/6/10 (missing homework)
 - 3 hours on 8/10/10 (missing homework)
 - 6 hours on 8/11/10 (absence)
 - 6 hours on 8/12/10 (absence)

5. On an unspecified date, it was determined that Claimant was non-compliant with JET participation due to her alleged failure to meet the hourly participation requirement.
6. On 8/25/10, DHS initiated termination of Claimant's FIP benefits based on the determination that Claimant was non-compliant with JET participation.
7. DHS scheduled a triage with Claimant on 8/26/10 for Claimant to discuss possible excuses for non-compliance.
8. Claimant failed to attend the triage.
9. On 8/31/10, Claimant submitted various medical documents (Exhibit 1-3) as an excuse for her failure to attend JET.
10. On 8/31/10m Claimant requested a hearing disputing 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.* 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.*

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.

The above policies are somewhat contradictory in that one regulation indicates that illness or an unavoidable event is an excused absence but there is a limit of 16 hours of excused absences per month. Elsewhere in DHS regulations, illness or unavoidable events (among other reasons) are good cause for non-compliance; good cause absences are not capped.

The only discernible difference between the two policies is that an “excused” absence does not have a verification requirement; absences that are found to be good cause must be verified. Thus, if a client fails to provide verification of an excuse, it would be considered as an excused absence and limited to 16 hours per month. If a client provides verification for the absence, then good cause should be found and the absence may not be considered as a factor in non-compliance.

In the present case, DHS contended 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 4) made by persons employed with JET. The undersigned allowed the notes to be entered as an exhibit under a hearsay exception under the Michigan Rules of Evidence. MRE 803(6).

Up until Claimant’s final JET absence (8/13/10), Claimant had not submitted any documents which would have excused her from JET attendance. Thus, it is found that Claimant was properly found to be non-compliant with JET participation.

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.*

It was not disputed that Claimant failed to attend her triage meeting on 8/25/10. It was also not disputed that Claimant did not submit any documentation of her JET absences until 8/31/10. Claimant stated that an illness prevented her triage attendance but provided no verification justifying her absence. In order to evaluate Claimant's documents for potential good cause for non-compliance, it must be determined whether there is a deadline in verifying good cause. The undersigned is unaware of any DHS regulations specifically restricting a client's timeframe in asserting good cause for non-compliance though it could reasonably be argued that a triage meeting is such a deadline. The letter mailed to clients informing them of a triage, Notice of Noncompliance (DHS-2444), states, "A meeting has been scheduled to give you an opportunity to report and verify your reason for noncompliance." The Notice of Noncompliance further states, "It is your responsibility to report and verify reasons for your actions. This is your opportunity to claim barriers that make it hard for you to work." RFF 2444 at 1. Based on the aforementioned language within the DHS-2444, the undersigned is somewhat inclined to impose a deadline of the triage on clients to assert a basis for good cause. However, Claimant is fortunate in that a DHS-2444 was not presented as an exhibit though one may very well have been issued. The undersigned can not assume that one was issued. Thus, the undersigned is hesitant to impose the triage date as a deadline for which good cause must be verified. Accordingly, Claimant's documents submitted 8/31/10 may be considered in the good cause evaluation. However, it should be noted that the undersigned might have disregarded the documents if DHS could have established that they were requested prior to the triage date.

Claimant submitted three documents in an attempt to excuse her JET absences. Claimant submitted a prescription form (Exhibit 1) from [REDACTED] dated 8/18/10 which stated, "Pt is extremely sensitive. Pt can't not go out in the sun." though a literal reading of the document would indicate that Claimant could go out in the sun, the undersigned is inclined to believe the intent of the document was to warn that Claimant could not go out in the sun. Claimant second submission was a [REDACTED] discharge instruction form (Exhibit 2) printed 8/13/10 which indicated a final diagnosis as a rash. Claimant's third document was a [REDACTED] discharge instruction form (Exhibit 3) dated 8/11/10 which indicated a diagnosis of headache and vertigo.

Claimant's testimony indicated a serious diagnosis of Lupus and a debilitating sensitivity to sunlight. Generally, Claimant's medical documents (Exhibits 1-3) did not communicate any particular serious medical condition. However, Claimant's documents at least verified attendance at an emergency room on two dates (8/11/10 and 8/13/10). The undersigned is not inclined to question the severity of Claimant's illness if she was

concerned enough to seek hospital visits on multiple dates. The dates of Claimant's verified hospital visits closely align with dates she missed with JET (8/10-10-8/12/10). It is found that Claimant established good cause for her absences from JET for 8/10/10-8/12/10.

By discounting Claimant's JET absences from 8/10/10-8/12/10 Claimant is left with only four hours of JET absences in which good cause was not established. DHS indicated that up to 16 hours of absences without good cause is allowed per month. Accordingly, it is found that DHS failed to find good cause for Claimant's JET absences and improperly found Claimant to be non-compliant with JET participation; accordingly, it is found that DHS improperly terminated Claimant's FIP benefits.

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 10/2010, supplement Claimant for any benefits lost as a result of the improper finding of noncompliance and remove any disqualification from Claimant's disqualification history as a result of the improper finding of non-compliance. The actions taken by DHS are REVERSED.



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

Date Signed: 2/23/2011

Date Mailed: 2/23/2011

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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