

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

IN THE MATTER OF: Reg.

[REDACTED]

No: 2011-13346
Issue No: 1038, 3029
Case No: [REDACTED]
Hearing Date:
March 2, 2011
Calhoun 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 March 2, 2011. The claimant, [REDACTED] appeared and provided testimony, as did [REDACTED]

ISSUE

Did the department properly terminate and sanction the claimant's Family Independence Program (FIP) benefits, and properly reduce claimant's Family Assistance Program (FAP) benefits based on the noncompliance of claimant's group member 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's group member, James [REDACTED] was a mandatory WF/JET participant and was required to participate 35 hours weekly in Job Search and Job Readiness. (Department Exhibits 4, 15).
2. On November 23, 2010, the department mailed [REDACTED] a Notice of Noncompliance (DHS 2444) for his failure to participate as required in employment and/or self-sufficiency related activities. The Notice indicated that it was at least the third noncompliance for [REDACTED] and noted he

was scheduled for a triage appointment for December 6, 2010, at 1:30 p.m. (Department Exhibits 6-8).

3. At the December 6, 2010, triage appointment, the department concluded that good cause did not exist for [REDACTED] noncompliance as it was based on his falsification of his job log sheet. (Department Exhibits 1-2).
4. On December 6, 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 due to group member [REDACTED] third noncompliance in failing to participate as required in employment and/or self-sufficiency related activities. The Notice of Case Action further advised claimant that her FAP case would decrease. (Department Exhibits 10-12).
5. Claimant submitted a hearing request on December 27, 2010, protesting the closure of her FIP case and the reduction of her FAP benefits.

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).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) 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 (DHS or department) 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 Program Reference Manual (PRM).

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 FAP 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.
- . If a penalized or previously penalized client moves from one group to another, their individual counter goes with them and will incrementally increase the case level counter for the new group. The penalty counter under the previous case number will decrease even when the sanction period still applies. BEM 233A.

Department policy further indicates that a noncompliant group member will be sanctioned from the FAP group for the FIP noncompliance if they are not deferred from FAP work requirements. BEM 233B.

In this case, claimant's group member, [REDACTED], was required to participate in the JET/Work First program as a condition of receiving FIP benefits. On November 23, 2010, the department issued [REDACTED] his third noncompliance for failing to participate as required in employment and/or self-sufficiency related activities. At the hearing, [REDACTED] did not dispute the basis for his noncompliance but disagreed that it was his third noncompliance as he believed it to be only his second noncompliance. However, the Bridges documentation and the corresponding JET/Work First case notes clearly indicate that [REDACTED] was previously found to be noncompliant with employment related activities on September 18, 2007 and November 20, 2007. (Department Exhibits 6-8). Moreover, while both claimant and [REDACTED] testified that the department had never previously advised them of the penalties for noncompliance, and specifically that a client's individual penalty counter goes with him/her from one group to another, the department representative testified that she outlined in detail for [REDACTED] during his orientation with the JET/Work First program the penalties for noncompliance and the fact that an individual's penalty counter never gets erased. That

the department representative may not have expressly advised [REDACTED] that his penalty counter will follow him to a new group is inconsequential given the fact that he was made aware that his counter would never be erased and was therefore in a position to inform claimant of his existing counter at the time she added him to her group. In addition, [REDACTED] also acknowledged his understanding of the penalty structure for noncompliance with the JET/Work First program, including the fact that his FIP benefits could close and his FAP benefits may decrease, when he signed the Work and/or Self-Sufficiency Rules for Case Recipients on October 11, 2010. (Department Exhibit 15).

The Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, claimant's group member has failed to show good cause for his failure to participate as required in employment and/or self-sufficiency related activities and the department properly terminated and sanctioned claimant's FIP case and properly decreased claimant's FAP benefits for the non-compliance of claimant's group member with WF/JET requirements.

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. The Administrative Law Judge further decides, based upon the above findings of fact and conclusions of law, that the department properly decreased claimant's FAP benefits for the non-compliance of claimant's group member with WF/JET requirements.

It is SO ORDERED.

____/s/____

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

Date Signed: March 4, 2011

Date Mailed: March 4, 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 60 days of the filing of the original request.

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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:

