STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[redacted]

Reg. No: 201111510
Issue No: 1038; 6000
Case No: [redacted]
Load No:
Hearing Date:
November 23, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on November 23, 2010.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for noncompliance with work-related activities?

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 FIP recipient in Wayne County.

(2) Claimant was meeting her minimum participation requirements of 20 hours per week as defined in her Family Self-Sufficiency Plan (FSSP), completing an average of 20 hours of core activities.

(3) Claimant was assigned extra activities by JET and DHS officials in order to gain more stable employment.

(4) Claimant admitted that she did not attend these extra hours of activities.

(5) Claimant admitted that she did not have good cause for attending these extra hours.

(6) On October 1, 2010, claimant was found noncompliant with work related activities and subsequently given a three month sanction, after a proper triage.

(7) This is claimant's second proposed penalty.

(8) On October 1, 2010, claimant requested a hearing, arguing that she had attended all required activities and therefore should not have been penalized.

(9) Claimant was represented at hearing by [redacted]

(10) Claimant's CDC benefits were cut.

(11) DHS agreed to reinstate claimant's CDC case based upon self-employment hours; the Department may request verification of those hours.

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 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) and the Bridges Reference Manual (BRM).

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Under Bridges Administrative Manual Item 600, clients have the right to contest any agency decision affecting eligibility or benefit levels whenever they believe the decision is illegal. The agency provides an Administrative Hearing to review the decision and determine if it is appropriate. Agency policy includes procedures to meet the minimal requirements for a fair hearing. Efforts to clarify and resolve the client's concerns start

when the agency receives a hearing request and continues through the day of the hearing.

In the present case the Department agreed to reinstate claimant's CDC case based upon self-employment hours; the Department may request verification of those hours. As a result of the agreement, claimant agreed that she no longer wished to proceed with the CDC portion of the hearing.

Therefore, as a result of the settlement, it is unnecessary for the Administrative Law Judge to render a decision with regard to the CDC program.

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full-time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. Clients who have not been granted a deferral must participate in employment and/or self-sufficiency related activities to increase their employability and to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called "noncompliance".

The penalty for noncompliance is FIP closure. BEM 233A.

This case is unusual in several respects. Claimant admitted during the hearing that she had missed the hours the Department alleged that she had missed. Furthermore, claimant did not argue that the Department was incorrect in its finding of no good cause.

The Department admitted that claimant had been meeting her minimum average hours requirement as given on her FSSP. Claimant completed on average 20 hours of core activities during the time period in question, when 20 hours was required by the FSSP.

Therefore, the issue that is before the Administrative Law Judge in the current case is twofold: Whether the Department could assign more activities to the claimant than is minimally required by policy, and; if they could, whether the claimant could be found noncompliant for failing to attend those extra assigned activities.

It is undisputed that claimant was a work-eligible individual. Work Eligible Individuals (WEIs) are FIP clients who count in the state and/or federal work participation rate. All WEIs are required to participate in work related activities for a minimum number of hours based on case circumstances unless reasonable accommodations are required and other activities are planned. BEM 228. Reasonable accommodations are required in cases of disability or other barriers that prevent full participation. BEM 230.

Required hours are the minimum number of hours per week on average the WEI is to participate in work-related activities to meet the federal work participation requirement. BEM 228. When creating an FSSP, DHS workers indicate the minimum number of

hours a WEI must participate in employment and/or self-sufficiency-related activities. BEM 230.

At particular issue in the current case is a single clause from BEM 230:

> "The MWAs use the minimum required hours indicated in the FSSP to initially assign clients to activities that meet federal minimum participation requirements, up to 40 hours per week unless reasonable accommodation policy applies and is documented."

The Department asserted that they could assign claimant to more than the required hours level, especially in claimant's case, where these required hours were meant to help claimant achieve self-sufficiency. Claimant disagreed with this assertion.

We must acknowledge that this is a terribly written clause and a reasonable source of confusion to anybody who spends more than a few seconds contemplating its intricacies, as the unfortunate Administrative Law Judge has been forced to do. The prime source of contention revolves around the use of "up to 40 hours", which could legitimately be used to modify three separate turns of phrase in our offending clause.

"Up to 40 hours" could first modify "the minimum required hours indicated in the FSSP", which would give us a plain reading of: "the minimum required hours indicated in the FSSP, up to 40 hours". This would mean that the minimum number of hours assigned by the Department may go up to 40 hours, and JET must assign activities that reach that minimum number of hours. This reading would provide no support to the Department's contention that JET could assign extra hours.

"Up to 40 hours" could also modify the word "activities", which would in turn read that the "MWA's…assign clients to activities, up to 40 hours". This would mean that JET can assign clients to any number of activities, as long as they don't go over a 40 hours per week. This is the reading that the Department argues for.

Finally, "up to 40 hours" could modify "federal minimum participation requirements", which would create a reading of "activities that meet the federal minimum participation requirements of up to 40 hours per week". This would mean that the federal minimum participation requirements themselves may be up to 40 hours per week. This reading would argue against the Department's contention.

The first step in the analysis of this case must therefore be a determination as to which of these three interpretations was most likely contemplated by the policy experts when they wrote this policy.

The undersigned feels that our third interpretation can be dismissed as the least likely of our three choices. Federal minimum participation requirements go up to at least 55

hours for dual parent grantees; single parent grantees have, at most, a minimum participation requirement of 30 hours. The current federal participation requirements do not go up to 40 hours. Therefore, such a reading would lead to erroneous statements, making this interpretation highly unlikely.

Unfortunately, deciding between the other two readings of this clause is substantially more difficult.

The first reading, that activities are assigned based on the hours indicated on the FSSP (which may be up to 40 hours), finds support in the fact that DHS is supposed to discuss with the client different activities (which may exceed minimum participation requirements) that may lead to self-sufficiency. It is implied in policy that a client may agree to more activities than are strictly required under contract provisions that are discussed later in this decision. Under this reading, JET caseworkers can then take these hours, which may equal 40 hours or below, and assign activities that meet the agreed upon, contracted, hours.

The undersigned is admittedly more sympathetic to this reading. There are certain instances—for instance, the case at hand—where an individual whom may have a low minimum participation requirement, may be better served by a higher requirement. Such instances would and should be on a case by case basis, and would best be explored in a personal dialogue between client and caseworker. Such a reading of this clause offers flexibility between individual cases, and, most importantly, does not impose onerous circumstances upon a client unless said client agreed to the circumstances in the first place.

This does not mean that this is the correct reading of the clause, however. The second reading, stating that up to 40 hours of activities may be assigned by JET caseworkers, regardless of the minimum participation requirements given by the FSSP is not an unreasonable reading of this clause. This reading is the first interpretation that springs to mind, and is thus supported under a plain reading of the policy item. Furthermore, it advances the not unreasonable proposition that a JET caseworker, who would be more knowledgeable of the day-to-day activities of their clients, would also be the best to decide what types of activities would be best for a particular client.

Unfortunately, this reading would allow JET employees to increase mandatory hours at any time with no real oversight. The minimum participation requirements would be useless if JET could increase every client's required hours to 40 hours. This could provide real harm to clients with legitimate reasons for only performing the minimum required hours given on the FSSP.

However, the question before the undersigned is not what the policy should say, but rather, what the policy does say. Upon great consideration, the undersigned can find no definitive argument that clearly supports one position over the other, or gives great weight to one interpretation of policy over another, equally valid, interpretation.

Therefore, the Administrative Law Judge must turn to a general interpretation of the policy as a whole to decide our question of whether JET can assign extra hours of participation to a client above and beyond their minimum required hours of participation.

Required hours are the minimum number of hours per week on average the WEI is to participate in work-related activities to meet the federal work participation requirement. BEM 228. It should be recognized that minimum hours are just that: the bare minimum. Black's Law Dictionary, 7th Edition, defines minimum thusly:

> "Of relating to, or constituting the smallest acceptable or possible quantity in a given case".

Minimum required hours, in our current case should therefore give a meaning that a person performing the minimum required hours is performing the smallest possible quantity. This, of course, implies that a claimant could do more hours.

If a claimant can do more hours, it therefore follows that a claimant could be assigned more hours, either by JET or DHS—frankly speaking, it would be a rare client indeed who randomly decided to spend most of his day at JET when not given a reason to be there.

However, that being said, policy states that a claimant must only do the minimum number of hours to remain compliant with policy. As stated above, BEM 228 states that required hours are "the minimum number of hours per week a WEI is to participate in work-related activities". This is not to say that a claimant could not be assigned more hours; however, it follows from this sentence that any hours above the minimum are not "required" hours.

Putting this into context with the clause in contention, the undersigned believes the answer becomes considerably clearer than the unfortunate clause is written. JET may assign extra participation hours to a client, up to 40 hours. However, these hours are not "required" hours, because they are above the minimum participation requirement set out by federal and state guidelines.

As these hours are not required hours, it follows that a claimant may not be sanctioned for failing to adhere to these hours. BEM 233A, which deals with noncompliance issues seems to agree.

BEM 233A states that a WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A. In the current case, claimant, while a WEI, participated in employment and self-sufficiency related activities. Claimant, however, did not participate in all activities.

Fortunately for the claimant, as it is agreed by both sides that claimant was participating in her minimum participation hours, and as the undersigned has arrived at the conclusion that these hours were the only hours that were required, it must follow that claimant was participating in the manner required by BEM 233A.

Furthermore, noncompliance 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); comply with activities assigned on the FSSP; provide legitimate documentation of work participation; appear for a scheduled appointment or meeting related to assigned FSSP activities; participate in employment and/or self-sufficiency-related activities; accept a job referral; complete a job application; appear for a job interview; 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.

It should be noted that, going down this exhaustive list, claimant did not fail or refuse to do anything in a way that would normally be deemed noncompliance. The closest thing on the list that may apply in the current situation is the clause "participate in employment and/or self-sufficiency-related activities". However, as stated above claimant was participating in all required employment and/or self-sufficiency-related activities. Claimant was just not participating in the extra hours assigned by JET.

As nothing in BEM 233A can be read to allow the sanctioning of a claimant who was participating in all required hours, the undersigned therefore holds that, although JET may assign non-required hours and extra activities (up to 40 hours) to a claimant, a claimant cannot be sanctioned for failing to attend these non-required activities. Since claimant was participating in all required hours, her failure to attend the extra hours is non-sanctionable, and claimant's sanction and penalty cannot stand.

However, this is not to say that all extra hours above the federal minimum participation requirements are non-sanctionable. The Administrative Law Judge notes that BEM 233A specifically allows for noncompliance if a claimant, without good cause, fails to attend or comply with activities specifically indicated on the FSSP. This leaves open the proposition that, should the extra hours be specifically identified and assigned through the FSSP, a claimant must abide by those extra hours or face sanction.

Policy supports this proposition. BEM 228 states:

> Initial development of the FSSP is considered complete when a date is entered on the Contract Agreements section for the first time of the current episode of cash assistance. This is documentation of the client's agreement to the goals and activities entered. Complete the Personal Contract when the FSSP is initially developed, and each time changes are made to the activities within the FSSP. Give or send a printed copy of the contract to the client each

> time it is complete d. T he printed version of the Personal Contract includes a notification to t he client that s/ he must contac t the DHS/JET worker if anything interferes with t he com pletion of an agreed upon activity.
>
> A clear and accurate Personal Contract is particularly important when it is develo ped as part of the triage or good cause determination.

The Administrative Law Judge reads this pr ovision to mean that the FSSP assigns th e activities that a client must perform; a c lient signs the FSSP ind icating their willin gness to abide by the clauses contained therein.

The policy further notes that the personal c ontract section of the FSSP is used to display activities agre ed to and changes made to the FSSP, and document the client's agreement to the plan. BEM 228 Combined with other sections of policy that show that even non-WEIs can agree to participate with JET (and face sanctions for failing to follow through on their participation), the undersigned does not think it unreasonable that the policy provides support for a client cont racting with DHS to do more hours than are strictly required. The client can always refuse these extra requirements; however BEM 233A provides for sanctions for failing to live up to the contracted details of an FSSP.

However, the undersigned does not believ e these c ontractual provisions a pply to the current case. The Department never submi tted an FSSP into evidence, and as such, the undersigned will n ot speculate what was or was not in the FSSP. The only issues are whether JET can assign c lients to extra hours above and beyond t he minimum requirements and whether a claimant can be sanctioned for failing participate with these extra hour s. Our answer to the former must be yes, based upon a reasonable plain reading of the policy , and the answer to t he latter must be no, as any such hours assigned would not be "required" hours as contemplated by the policy.

As claimant was sanc tioned for failing to perform non-required hours, and there is no proof that these non-r equired hours were agr eed to in an FSSP, the Adminis trative Law Judge mus t hold that any sancti on and penalty that resulted fr om claimant's failure to perform the non-required hours was incorrect.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, dec ides that J ET may as sign hour s to clients above and beyond the minimum required hours given by policy, up to 40 ho urs. However, thes e hours are not required hours, and the Depart ment may not sanction a c laimant for failin g to participate in non-required hours.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to reinstate claimant's FIP benefits retroactive to the date of negative action, if necessary. The Department is FURTHER ORDERED to remove all sanctions and penalties against claimant's case resulting from the matter in question, and reassign claimant to all required JET classes.

Finally, the Department is ORDERED to reinstate claimant's CDC case based upon self-employment hours; the Department may request verification of those hours, if it has not done so already.

Robert J. Chavez
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 24, 2011

Date Mailed: May 24, 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.

RJC/hw

cc: [redacted]