

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-21472

Issue No: 1038

[REDACTED]

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on February 16, 2011. After due notice, a telephone hearing was held on June 1, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly terminated and sanctioned 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. (Hearing Summary).
2. On January 11, 2011, Claimant completed the intake and was referred to Good Will beginning January 18, 2011 at 8:15 A.M. Claimant indicated she had reliable child care for her two children and a transportation barrier. Customer requested County Connections but because she lived less than a mile from the bus line, the request was denied and she was informed she was eligible for bus tickets. (Department Exhibits 2-3).
3. On January 13, 2011, Claimant called and requested the Go Bus because her 11-year-old needed to get on the school bus in the morning and she

did not want to leave the house and leave him unsupervised to catch the bus before he did. (Department Exhibit 7).

4. Claimant failed to attend JET on January 18, 2011 and January 21, 2011. (Department Exhibit 2).
5. On January 31, 2011, the department mailed Claimant a Notice of Noncompliance because she failed to participate as required in employment and/or self-sufficiency related activities. The department informed Claimant that she was scheduled for an appointment on February 9, 2011, to demonstrate good cause for noncompliance. The notice explained that failure to show good cause could result in loss of benefits. (Department Exhibits 8-9).
6. A telephone Triage was held on February 9, 2011 and Claimant stated she did not attend due to lack of transportation and child care. No good cause was found. (Department Exhibit 2).
7. The department mailed Claimant a Notice of Case Action on February 9, 2011, informing Claimant that her FIP program was being closed as of March 1, 2011, because she failed to participate in employment and/or self-sufficiency related activities. (Department Exhibits 10-11).
8. Claimant submitted a hearing request on February 16, 2011, protesting the closure of her FIP benefits. (Request for a Hearing).
9. This is Claimant's second non-compliance with the FIP program. (Department Exhibits 8-9).

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) and the Reference Tables Manual (RFT).

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. Claimant failed to attend JET on January 18, 2011 and January 21, 2011. A telephone Triage was held on February 9, 2011. Claimant stated she had missed the JET classes because of lack of transportation and childcare. The department found that Claimant was noncompliant for not attending her JET.

Claimant testified that she is a single mother and had an eleven year old son whose bus came after she would have had to leave to catch the bus to attend JET. The JET case notes documented Claimant's attempts to obtain alternate transportation so that she would not have to leave her son alone. Claimant stated that she had to catch the bus at 6:56 A.M. in order to arrive at JET on time and that it was an hour and a half bus ride. Claimant testified that she had no problem attending JET; but that she needed to make sure her son got on the bus safely and could not leave her eleven year old home alone to catch the bus.

The department did not contradict Claimant's testimony or timeline in the bus ride she would have to take to attend JET. The department maintained that they did not "make special arrangements for parents to be at home while their kids catch the school bus."

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. Looking at all of the factors in this case, this Administrative Law Judge finds Claimant had good cause based on lack transportation and childcare. During the initial intake on January 11, 2011, Claimant told the department that transportation was going to be a barrier. At that time alternate transportation was denied because she lived less than a mile from the bus line. On January 13, 2011, Claimant contacted the department again and explained that she could not leave her 11 year old home alone to catch the school bus. The department's response was no special arrangements are made for parents to be at home while their kids catch the school bus.

Because of the many options available through the JET program, it would appear the department could have at the very least changed the hours Claimant had to report to JET, especially based on her uncontroverted testimony that it was more than an hour and a half bus ride from her home to the JET site. Furthermore, had Claimant left her 11 year old son home alone in order to attend JET, there is the very real possibility that she would have been reported to Child Protective Services.

As a result, the Administrative Law Judge finds that, based on Claimant's credible and uncontroverted testimony presented during the hearing, Claimant has shown good cause for missing her JET appointments. Therefore, the Administrative Law Judge finds the department improperly closed Claimant's FIP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly closed Claimant's FIP case for noncompliance with WF/JET requirements and the 3-month sanction is REVERSED.

Accordingly, the department shall reinstate Claimant's FIP benefits to March 1, 2011, and issue any supplements to which she is otherwise entitled.

It is SO ORDERED.

_____/s/_____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 6/7/11

Date Mailed: 6/7/11

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.

VLA/ds

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