

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

IN THE MATTER OF:



Registration. No: 2011-23949
Issue Nos: 1038
Case No: [REDACTED]
Hearing Date: June 16, 2011
Kent County DHS

Administrative Law Judge: Mark Meyer for Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with MCL 400.9, MCL 400.37 and 1979 AC, R 400.903. Claimant requested a hearing on March 1, 2011, and, after due notice, one was held on June 16, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

This hearing was originally held by Administrative Law Judge Suzanne Sonneborn. Judge Sonneborn is currently out of the office on leave and this hearing decision was completed by Administrative Law Judge Mark Meyer by considering the entire record.

ISSUE

In dispute, was whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits, based on her noncompliance with Work First/Jobs, Education, and Training (WF/JET) requirements?

FINDINGS OF FACT

Based on the competent, material, and substantial evidence on the whole record, the Administrative Law Judge finds as relevant fact:

1. As of December 27, 2010, Claimant was a participant in the WF/JET program.
2. On December 27, 2010, Claimant missed a WF/JET-required activity scheduled for that date. (Department's Exhibit 1; Department's Exhibit 5.)

3. The Department mailed a notice of noncompliance to Claimant on January 4, 2011, informing her that a triage meeting was scheduled for January 12, 2011. The purpose of the meeting was to permit Claimant to report and verify her reasons for the determined noncompliance. (Department's Exhibit 1.)
4. Claimant attended the triage meeting on January 12, 2011. On that date, she signed a First Noncompliance Letter (DHS-754), agreeing that she was noncompliant, without good cause, regarding the missed WF/JET activity on December 27, 2010. (Department's Exhibit 3.)
5. At the triage meeting, Claimant also signed a document indicating her agreement to, among other requirements, return to the WF/JET contractor for a reengagement meeting on January 13, 2011, at 8:30 a.m. (Department's Exhibit 4.)
6. On January 13, 2011, Claimant failed to attend the reengagement meeting with the WF/JET contractor. (Department's Exhibit, 5.)
7. The Department mailed a notice of case action to Claimant on February 18, 2011, informing her that her FIP cash benefit case would be closed, effective April 1, 2011, due to her refusal or failure to participate in the WF/JET program as required. Claimant was also informed that she would be ineligible to receive FIP benefits for at least three months as a result of her noncompliance with WF/JET requirements. (Department's Exhibit 7-8.)
8. From the Department's FIP closure determination and three month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated March 1, 2011.)

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by 1979 AC, R 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). Indeed, an applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p 1.¹

¹ All citations are to Department of Human Services (Department) policy in effect at the time of the agency action in issue.

Here, the Department determined no good cause existed for Claimant's second failure to comply with WF/JET requirements; specifically, her failure to attend the January 13, 2011, reengagement meeting. Claimant's FIP cash benefit case was ultimately closed and she was sanctioned for three months, effective April 1, 2011. From this determination, Claimant filed a request for hearing.

The FIP was established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC 601, *et seq.* The Department administers the FIP in accordance with MCL 400.10, *et seq.*, and Rules 400.3101 through 400.3131. The FIP replaced the Aid to Dependent Children (ADC) program, effective October 1, 1996. Agency policies pertaining to the FIP are found in the BAM, Bridges Eligibility Manual (BEM), and program reference manuals. The program's purpose is to provide temporary cash assistance to support a family's movement to self-sufficiency. BEM 230A, p 1. The focus is to assist clients in removing barriers so that they may participate in activities leading to self-sufficiency. BEM 233A, p 1

Federal and State laws, from which the Department's policies derive, require each work eligible individual (WEI) in a FIP group to participate in the WF/JET program, unless temporarily deferred or engaged in activities that otherwise meet the program's participation requirements.² BEM 230A, p 1.

A WEI who fails or refuses, without good cause, to participate in assigned employment or other self-sufficiency related activities is subject to penalties. BEM 230A, p 1; BEM 233A, p 1. These penalties include the following:

- A delay in eligibility at the time of application;
- Ineligibility;
- Case closure for a minimum of three or twelve months.

BEM 233A, p 1.

Noncompliance in engaging in WF/JET employment or self-sufficiency related activity requirements generally means doing any of the following without good cause:

- Failing or refusing to:
 - Appear and participate with the [WF/JET] [p]rogram or other employment service provider.

² Group composition is the determination of which individuals living together are included in the Family Independence Program (FIP) eligibility group. Bridges Eligibility Manual (BEM) 210, p 1.

- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP [Family Self-Sufficiency Plan] process.

* * *

- Develop a[n] . . . FSSP.

* * *

- Comply with activities assigned on the 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[.]
- 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, pp 1-2.]

Good cause for not complying with WF/JET employment or self-sufficiency related activities means "a valid reason for noncompliance . . . that [is] based on factors *that are beyond the control of the noncompliant person.*" BEM 233A, p 3. (Emphasis added.) A claim of good cause must be verified. BEM 233A, p 3. Good cause includes the following:

- Employed forty hours
 - The person is working at least 40 hours per week on average and earning at least the State minimum wage.
- Client unfit
 - The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity.
- Illness or injury
 - The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client.
- Reasonable accommodation
 - The Department, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.
- No child care
 - The client requested child care services from the Department, the Michigan Works Association (MWA), or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable, and within reasonable distance of the client's home or work site.
- No transportation
 - The client requested transportation services from the Department, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

- Illegal activities
 - The employment involves illegal activities.
- Discrimination
 - The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc.
- Unplanned event or factor
 - Credible information indicates an unplanned event or factor that likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to the following:
 - a. Domestic violence
 - b. Health or safety risk
 - c. Religion
 - d. Homelessness
 - e. Jail
 - f. Hospitalization
- Comparable work
 - The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.
- Long commute
 - Total commuting time exceeds:
 - a. Two hours per day, NOT including time to and from child care facilities, or
 - b. Three hours per day, including time to and from child care facilities.

BEM 233A, pp 4-5.

The penalty for noncompliance without good cause is closure of the FIP case as follows:

- First occurrence of noncompliance = FIP case closure for not less than three calendar months, *unless* the client is excused from the noncompliance. See BEM 233A, pp 8-9.
- Second occurrence of noncompliance = FIP case closure for not less than three calendar months.
- Third and subsequent occurrence of noncompliance = FIP case closure for not less than twelve months.

BEM 233A, p 6.

Where the Department determines that a participant in the WF/JET program is noncompliant, that person will not be terminated from the program without first being provided a triage meeting at which the noncompliance and the existence of good cause are discussed. BEM 233A, p 7. At that time, a good cause determination is made by the agency based on the best available information provided at triage and prior to the negative action date. BEM 233A, p 7; see also BEM 233A, p 10.

Here, a triage meeting took place on January 12, 2011. Claimant attended that meeting and agreed that she was noncompliant, without good cause, by failing to participate in the WF/JET activity on December 27, 2010. Moreover, Claimant admitted this first noncompliance at the hearing. She testified, however, that "I know I didn't comply [regarding the December 27, 2010, WF/JET activity], but I was going through personal issues with my son who was going through surgery." (Claimant's hearing testimony, June 16, 2011.)

At the triage meeting for a first noncompliance with WF/JET requirements, sanctions are discussed with the client. An offer is made to the client to comply with stated WF/JET requirements by a given due date. If the client accepts the offer, agrees with the Department's determination of noncompliance, agrees to comply with the stated WF/JET requirements, and subsequently verifies compliance by the given due date, the agency will reinstate the client's case without loss of FIP benefits. The instance of noncompliance will, however, remain on the client's record even if she complies. BEM 233A, pp 8-9.

In the present matter, in addition to agreeing to the Department's first noncompliance determination without good cause, Claimant also signed an agreement at the triage meeting that she would, among other things, not be absent for WF/JET activities, arrive on time at her WF/JET readiness site, and attend a reengagement meeting on January 13, 2011. But, Claimant failed to attend this meeting. She was thus deemed by the agency to be in noncompliance with WF/JET requirements for a second time.

Claimant's reason for failing to attend the January 13, 2011, WF/JET reengagement meeting was that "around [the time of this meeting], I was attending JobsCorp If I missed one day then I would be terminated off [that] program." (Claimant's hearing testimony, June 16, 2011.) According to her, going to Jobs Corp "to get my GED and CNA license was more important than going job hunting." (Claimant's hearing testimony, June 16, 2011.) Claimant further stated: "I just didn't feel comfortable looking for a job [a WF/JET requirement] without my GED." (Claimant's hearing testimony, June 16, 2011.) Claimant acknowledged, however, that she was aware of the consequences of not following through with WF/JET program requirements established during the January 12, 2011, triage meeting.

The Department provided credible testimony that even if Claimant were involved with JobsCorp during the time period in issue, she was still required to participate in required WF/JET activities unless a deferral was in place. No evidence was presented from either party indicating the presence of any deferral. (See reasons for deferral, BEM 230A, pp 24-25.)

Here, Claimant admitted that she was noncompliant with WF/JET required activities. Furthermore, based on the testimony and other evidence presented, it could not be reasonably concluded that good cause existed for her second noncompliance. See BEM 233A, pp 4-5. There were no valid reasons, based on factors outside Claimant's control, for this noncompliance. She simply chose not to attend a scheduled activity, as agreed to on January 12, 2011.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department properly determined that Claimant was, for the second time, noncompliant with WF/JET program requirements without good cause. Based on this determination, the agency properly terminated and sanctioned Claimant's FIP benefits for at least a three-month period.

The Department's action is UPHeld.

It is SO ORDERED.

Mark _____/s/

Meyer
Administrative Law Judge
for Maura D. Corrigan, Director
of Human Services

Department

Date Signed: June 23, 2011

Date Mailed: June 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.

Claimant may appeal this Decision and Order to the Circuit Court for the county in which he/she resides within 30 days of the mailing of this 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:

