

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

IN THE MATTER OF:



Reg. No: 201128620
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
June 22, 2011
Bay County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the client's (also referred to as "the claimant") request for a hearing received on March 22, 2011. After due notice, a telephone hearing was held on June 22, 2011. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly terminate and sanction the 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. The claimant was a mandatory WF/JET participant beginning on February 14, 2011. (Hearing Summary).
2. On February 23, 2011, the claimant was approved for FIP. (Hearing Summary).
3. The claimant was required to participate in the JET program 20 hours per week. (Hearing Summary).

4. The claimant met the participation requirement during the first week, but she failed to fulfill her weekly JET participation requirement during the second week (February 21, 2011 through February 25, 2011). (Hearing Summary & Department Exhibits 5-6).
5. The claimant did not contact Michigan Works to provide a reason for her failure to participate. (Hearing Summary).
6. On February 25, 2011, JET called the claimant and left her a message requesting a return call. The claimant did not return this message. (Hearing Summary).
7. On February 28, 2011, the department mailed the claimant a Notice of Non-Compliance (DHS-2444) because she failed to participate in JET during the week of February 21, 2011 through February 25, 2011. (Department Exhibits 3-4). A triage was scheduled for March 4, 2011 at 9:00a.m. (Department Exhibits 3-4).
8. The claimant failed to appear at the triage on March 4, 2011. (Department Exhibit 6).
9. On March 10, 2011, the claimant called the department caseworker and stated that she did not attend the March 4, 2011 triage due to illness. (Department Exhibit 6) Triage was held via telephone on March 10, 2011 while the claimant was on the phone. (Hearing Summary). At triage, the claimant explained that she failed to attend JET during the week of February 21, 2011 because both she and her children were ill. (Hearing Summary)
10. At the March 10, 2011 triage, the claimant did not provide verification of the illnesses to herself or her children and did not explain why she failed to report the issue to JET prior to the Triage. (Hearing Summary). The claimant did not believe she was required to attend JET because she had a dispute about the amount of benefits she had received.¹ (Hearing Summary)
11. On March 10, 2011, the department mailed the claimant a First Noncompliance Letter (DHS-754) which permitted the claimant to continue participation in JET on March 14, 2011 at 8:30a.m. (Hearing Summary & Department Exhibits 1 & 6)
12. The claimant did not appear at JET on March 14, 2011. (Department Exhibits 1, 2 & 6)

¹The claimant's request for a hearing did not involve her reported dispute about the amount of FIP benefits but was limited to her JET participation in February and March of 2011.

13. The department mailed the claimant a Notice of Case Action on March 14, 2011, informing the claimant that her FIP program was being closed for at least 3 (three) months beginning April 1, 2011, because she failed to participate in employment and/or self-sufficiency related activities. (Notice of Case Action).
14. On March 22, 2011, the claimant submitted a hearing request challenging the closure of her FIP benefits. (Request for a Hearing).
15. On April 13, 2011, the claimant did not appear at a Pre-Hearing Conference. (Department Exhibit 14).

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 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 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.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency-related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A. 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) or PRPFC.
 - .. Appear for a scheduled appointment or meeting related to assigned activities.
 - .. Provide legitimate documentation of work participation.
 - .. 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. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A. DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking. BEM 233A. Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. This does not include applicants. BEM 233A.

The department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within 3 (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. BEM 233A. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A. 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. See “School Attendance” BEM 201 for good cause when minor parents do not attend school. 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.

Good cause includes the following:

- . **Employed 40 Hours.** The person is working at least 40 hours per week on average and earning at least state minimum wage. BEM 233A.
- . **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. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A.
- . **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. BEM 233A.
- . **Reasonable Accommodation.** The DHS, 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. BEM 233A.
- . **No Child Care.** The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site. BEM 233A.
 - . **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions. BEM 233A.
 - . **Reasonable distance.** The total commuting time to and from work and child care facilities does not exceed three hours per day. BEM 233A.

- . **Suitable provider.** The provider meets applicable state and local standards. Also, providers (e.g., relatives) who are NOT registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. BEM 233A. (See BEM 704.)
- . **Affordable.** The child care is provided at the rate of payment or reimbursement offered by DHS. BEM 233A.
- . **No Transportation.** The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. BEM 233A.
- . **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. BEM 233A.
- . **Unplanned Event or Factor.** Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. BEM 233A. Unplanned events or factors include, but are not limited to the following:
 - . Domestic violence.
 - . Health or safety risk.
 - . Religion.
 - . Homelessness.
 - . Jail.
 - . Hospitalization. BEM 233A.

- . **Comparable Work.** The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit. BEM 233A.
- . **Long Commute.** Total commuting time exceeds:
 - . Two hours per day, NOT including time to and from child care facilities, **or**
 - . Three hours per day, including time to and from child care facilities. BEM 233A.
- . **EFIP.** EFIP unless noncompliance is job quit, firing or voluntarily reducing hours of employment. BEM 233A.
- . **Clients Not Penalized.** Ineligible caretakers, disqualified aliens, and single parents that cannot find appropriate child care for a child under age 6 are not required to participate. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for 3 calendar months unless the client is excused from the noncompliance as noted in "First Case Noncompliance Without Loss of Benefits" below. BEM 233A
- . For the second occurrence on the FIP case, close the FIP for 3 calendar months. BEM 233A.
- . For the third and subsequent occurrence on the FIP case, close the FIP for 12 calendar months. BEM 233A.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

A penalty is not imposed if the client establishes good cause within the negative action period. BEM 233A. When that occurs, the client should be sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A. A new referral should not be entered on ASSIST. BEM 233A. However, if the client does not provide a good cause reason

within the negative action period, the department will determine good cause based on the best information available and allow the case to close. BEM 233A.

A FAP group member will be disqualified for noncompliance when:

- . The client was active both FIP and FAP on the date of the FIP noncompliance, and
- . The client did not comply with FIP employment requirements, and
- . The client is not deferred from FAP work requirements (see DEFERRALS in BEM 230B), and the client did not have good cause for the noncompliance. BEM 233B.

In this case, the claimant was required to participate in the WF/JET program as a condition of receiving FIP benefits. During the week of February 21, 2011 through February 25, 2011, the claimant did not participate in the JET program. The claimant did not return phone calls nor did she provide a reason for her failure to participate. On March 4, 2011, the claimant failed to appear at the triage. Later, on March 10, 2011, the claimant called the department caseworker and, for the first time, said that her failure to attend the triage was due to an unspecified illness. The department treated the March 10, 2011 telephone conference as a second triage. During this second triage, the claimant said that she failed to attend JET (February 21, 2011 through February 25, 2011) because she and her children were sick. During the hearing, the claimant did not describe the nature of the illnesses nor did she provide any independent verification of same. Although the claimant testified that the department caseworker failed to return her phone calls, the claimant did not explain why she failed to contact her JET caseworker and report the illnesses earlier.

The claimant also testified that she told the department caseworker that she should not have to attend JET due to a dispute over the amount of benefits she had with the department at the time. This ALJ does not find that the claimant's statement rose to the level of a definite intent not to comply with program requirements. To the extent that the claimant had a dispute regarding her benefits, the claimant agreed that those disputes were not related to the issues giving rise to the instant hearing request.

The record reveals that the department provided the claimant with an opportunity to continue her JET activities and scheduled her to appear on March 14, 2011, but the claimant did not show up. The department found that the claimant was noncompliant for not attending JET club and her FIP was closed on April 1, 2011.

The Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, the claimant has failed to show good cause for missing her required JET activities during the week of February 21, 2011 and on March

14, 2011. As a result , the department properly closed the claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed the claimant's FIP case for noncompliance with WF/JET requirements and the 3 (three) month sanction is AFFIRMED.

It is SO ORDERED.

____/s/

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 24, 2011

Date Mailed: June 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.

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