

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

IN THE MATTER OF:

[REDACTED]

Registration. No: [REDACTED]
Issue Nos: 1038
Case No: [REDACTED]
Hearing Date: June 28, 2011
Saginaw County DHS

Administrative Law Judge: Mark A. Meyer

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 30, 2011, and, after due notice, one was held on June 28, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

In dispute was whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits, based on a determined first 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. At all times relevant to this matter, Claimant was receiving FIP benefits.
2. On February 24, 2011, the Department sent Claimant a WF/JET work-related appointment notice, informing her to attend the appointment on March 7, 2011. The notice was mailed to Claimant's address of record – [REDACTED] (Department's Exhibit A.)
3. Claimant did not appear at the scheduled WF/JET appointment.
4. On March 9, 2011, the Department sent Claimant a notice of noncompliance regarding her missed WF/JET work-related appointment. The notice was mailed to Claimant's address of record – [REDACTED] (Department's Exhibit B.)

5. The notice of noncompliance informed Claimant that a triage meeting was scheduled for March 21, 2011. The purpose of this meeting was to allow Claimant the opportunity to report and verify her reasons for not attending the March 7, 2011, WF/JET appointment. (Department's Exhibit B.)
6. Claimant did not appear at the scheduled triage meeting.
7. The Department mailed a notice of case action to Claimant on March 21, 2011, informing her that her FIP cash benefit case would be closed, effective May 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 C.)
8. The Department did not receive notice that Claimant moved to [REDACTED] until March 24, 2011, at the earliest.
9. Despite Claimant's determined noncompliance and failure to attend the March 21, 2011, triage meeting, and because her FIP case closure was not scheduled to take place until May 1, 2011, the Department offered to find good cause for her noncompliance if she attended a WF/JET work-related activity on March 28, 2011. (Department's hearing summary, dated April 11, 2011; Department representative's hearing testimony, June 28, 2011; Claimant's hearing testimony, June 28, 2011.)
10. Claimant did not attend the March 28, 2011, WF/JET appointment.
11. From the Department's FIP closure determination and three month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated March 30, 2011.)
12. On June 7, 2011, Claimant informed the agency that she moved back to the [REDACTED] address – her parents' residence. (Department's Exhibit F.)

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

Here, the Department determined that no good cause existed for Claimant's first failure to comply with WF/JET requirements; specifically, her refusal or failure to attend an employment-related activity scheduled for March 7, 2011. Claimant's FIP cash benefit case was to be closed and she was to be sanctioned for three months, effective May 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. The purpose of the WF/JET program is to increase a client's employability and to obtain employment. 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:

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

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.

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

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.

Here, Claimant's noncompliance with WF/JET activities, specifically her failure to attend appointments on March 7, 2011, March 21, 2011, and March 28, 2011, is unequivocally established. In fact, Claimant admitted her lack of attendance at all three appointments.

According to Claimant, however, good cause existed for her failure to comply with the assigned and scheduled WF/JET-related appointments, or attend the triage meeting. She testified that she did not receive either the March 7, 2011, appointment notice, mailed to her by the Department on February 24, 2011, or the March 21, 2011, notice of noncompliance and triage meeting, mailed to her by the agency on March 9, 2011, because she was not living at the [REDACTED] address during that time period. Claimant asserted that she moved from that address (her parents' residence) to the [REDACTED] address sometime in January 2011. This Administrative Law Judge finds Claimant's testimony to be neither credible nor persuasive.

First, Claimant provided no evidence that she ever actually resided at the [REDACTED] address (e.g., utility bills, apartment lease agreement, etc.) at any point in time. Further, Claimant offered no documentary evidence indicating when she informed the Department of her claimed move to the [REDACTED] address. Although Claimant testified that she left voicemail messages for her Department caseworker regarding her change of address, she could not recall with any specificity on what date those messages were left.

Second, Claimant provided no reasonable explanation for why, while ostensibly living at the [REDACTED] address, she received some of the Department's correspondence sent to the [REDACTED] address (e.g., the notice of case action), and

some she did not (e.g., the WF/JET appointment letter and the notice of noncompliance). Also of interest to this Administrative Law Judge is that Claimant received the Department's notice of hearing, sent to her on June 13, 2011, at the [REDACTED] address despite her hearing testimony that she moved from that address "sometime in May" 2011. Her receipt, and non-receipt, of mail from the agency seemed to be somewhat selective.

The Department, on the other hand, provided testimony and other documentary evidence credibly indicating that the agency never received any returned mail sent to Claimant during the time period in issue. This evidence further indicated that the earliest the Department received notice of an address change for Claimant's case was March 24, 2011 – after the WF/JET appointment notice (Department's Exhibit A), the notice of noncompliance (Department's Exhibit B), and notice of case action (Department's Exhibit C) were mailed to her. The first time the agency was made aware of her ostensible move back to her parents' residence at [REDACTED] was June 7, 2011. (Department's Exhibit F.)

Moreover, following the Department's determination of noncompliance in this matter, Claimant was offered a "deal" by the agency that if she attended a WF/JET work-related appointment on March 28, 2011, she would be deemed to have "good cause" for her noncompliance and her FIP benefits would continue. Claimant admitted at hearing to receiving this offer – she failed however to attend the appointment. According to Claimant, she was too ill to attend. She provided a copy of a physician's note, dated March 21, 2011, which stated "[patient] seen here today for illness." (Claimant's Exhibit C-1.) This evidence failed, however, to reasonably establish that she was too ill to attend the March 28, 2011 WF/JET appointment – the note was dated a week before the scheduled appointment and provided no documentation of any restrictions on Claimant's activity (e.g., attending WF/JET work-related appointments).

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Here, viewing the testimony and other evidence in its entirety, it cannot be reasonably concluded that Claimant met her burden of demonstrating good cause for her noncompliance with WF/JET work-related activities.³

DECISION AND ORDER

³ Claimant was also receiving Food Assistance Program (FAP) benefits at the time of the Department's action in the present matter. Those benefits, however, were unaffected by the agency's determination of FIP noncompliance.

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department properly determined that Claimant was noncompliant with WF/JET work activity 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, effective May 1, 2011.

The Department's action is UPHELD.

It is SO ORDERED.

/s/

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

Date Signed: June 30, 2011

Date Mailed: _____

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 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.

MAM/cr

cc:

