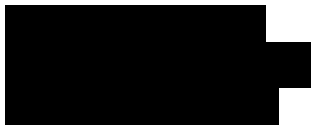


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Registration No: 2011-36133
Issue No: 1038
Case No: [REDACTED]
Hearing Date: August 3, 2011
Bay County DHS

Administrative Law Judge: Mark A. Meyer

HEARING DECISION

In accordance with MCL 400.9, MCL 400.37, and 1999 AC, R 400.903 a hearing was held in this matter on August 3, 2011. Claimant's husband 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, and reduced her Food Assistance Program (FAP) benefits, based on a determined third 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 and her husband were receiving FIP and FAP benefits as part of a two-parent family household. (Department representative's hearing testimony, August 3, 2011; Department's hearing summary, dated June 7, 2011.)
2. To remain eligible for FIP cash benefits, Claimant's husband was required to participate in the WF/JET program twenty five hours per week. (Department's Exhibit D-5.)
3. On January 18, 2011, Claimant's husband signed a self-initiated community service plan, agreeing to meet his required WF/JET hours by participating in community service with Disability Services Resource Center (DSRC). (Department's Exhibit D-1.)

4. On March 24 and 28, 2011, the DSRC office manager met with Claimant's husband to discuss a perceived tardiness issue. (Department's Exhibit D-2.)
5. On March 30, 2011, the WF/JET case manager was informed by DSRC that Claimant's husband arrived late on numerous occasions to perform his community service responsibilities. (Department's Exhibits D-2; D-3)
6. On March 31, 2011, DSRC terminated Claimant's husband from its community service program. (Department's Exhibit, D-3.)
7. As a result of this termination, Claimant's husband was determined by the Department to be in noncompliance with his WF/JET work-related requirements. A triage meeting was scheduled for April 8, 2011. Claimant's husband attended the meeting, but it was determined by the agency that no good cause existed for his failure to comply with WF/JET requirements. (Department's Exhibits D-4; D-5; D-6.)
8. On April 18, 2011, the Department notified Claimant that, because of her husband's noncompliance with the WF/JET program, her FIP case would be closed, effective May 1, 2011, that she would be sanctioned from the program for twelve months, and that her FAP monthly benefit allotment would be decreased to [REDACTED]. (Department's Exhibit D-8.)
9. From the Department's action in this matter, Claimant and her husband filed a request for hearing. (Claimant's hearing request, dated April 26, 2011.)

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by 1999 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.

Here, the Department found that no good cause existed for Claimant's determined third failure to comply with WF/JET requirements. From this determination, Claimant and her husband 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. 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:

- 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.

Here, the Department contended that Claimant's husband was noncompliant with WF/JET requirements, solely because it was determined that he was "repeatedly late for his scheduled shift" at DSRC. According to the agency, he "repeatedly did not call in advance [when he was going to arrive late]." And, DSRC "discussed this issue with [Claimant's husband] several times, and nothing had changed[.]" (Department's hearing summary; Department representative's hearing testimony.) Based on the evidence presented, or rather the lack thereof, the Department failed to sufficiently and reasonably demonstrate noncompliance in this matter. Without the establishment of noncompliance, there is no need to determine whether good cause existed.

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).

In the present matter, the Department produced a letter from the DSRC office manager that stated in relevant part:

When [Claimant's husband] started volunteering at DSRC, he was asked to help with driving, ramp building, and maintenance. When he first started in February, it was a slow time of year for DSRC, so I asked him what time he would be coming in, knew then that he needed time for job searching. He would often say that he would be in at 10 or 11 [a.m.], but we wouldn't see or hear from him until 2 or 3 [p.m.]. [Department's Exhibit D-3.]

The bulk, if not all, of the Department's case against Claimant's husband in this matter centered around the statements made by the DSRC office manager. (See Department's Exhibits D-2; D-3; D-6.) But, further evidence provided by the agency failed to support the office manager's statements – it is noted that she was not present at hearing. Time sheets for the period February 28, 2011, through March 25, 2011, demonstrated that Claimant's husband more often than not appeared for community service at DSRC at 11:00 a.m.; on several occasions, even earlier. According to these time sheets, the latest he ever appeared was 1:00 p.m. – that was on one occasion, ironically, just days before he was terminated from community service by DSRC. (See Department's Exhibit D-9.) Interestingly, the time sheets for the week of March 28, 2011, the week in which DSRC claims to have counseled Claimant's husband about his repeated tardiness, and required him to sign an agreement to call in if he was going to "be late," were not produced by the Department. (It is also noted that the agreement purportedly signed by Claimant's husband was also not produced by the agency.)

Further, Claimant's husband provided testimony that there was never a set schedule or daily starting time for his participation in community service at DSRC. The Department provided no documentation indicating that such a schedule was established or even existed between DSRC and Claimant's husband. The lack of such evidence strengthens the testimony of Claimant's husband.

And, based on the testimony and other evidence provided in this matter, it appeared that there may have been a souring of the relationship between DSRC and Claimant's husband during the week of March 28, 2011, a situation that may have prompted DSRC to take the action of effectively terminating his services two days later on March 30, 2011. For example, Claimant's husband testified that he was lately being asked to participate in community service at DSRC beyond the number of hours he was required under the WF/JET program. Although chastised by the Department for "not report[ing]"

any issues [with DSRC] to his [WF/JET] Career Manager," (see the agency's hearing summary), it did not appear that he had much opportunity to do so between the time he was ostensibly counseled by the DSRC office manager, terminated from DSRC, and scheduled for triage.

The Administrative Law Judge recognizes that this is not the first time Claimant or her husband have been found to be noncompliant with WF/JET requirements. That fact, however, is not dispositive. In light of the evidence as presented, it cannot be reasonably concluded that the Department met its burden of establishing noncompliance in the most recent situation. The scales simply do not sufficiently tip in the agency's favor here.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department improperly determined that Claimant was noncompliant with WF/JET community service requirements. Based on this improper determination, the agency further erred in terminating and sanctioning Claimant's FIP benefits for at least a twelve-month period, effective May 1, 2011, and in reducing her FAP benefits beginning on the same date.

Therefore, the Department's action in this matter is REVERSED.

It is SO ORDERED.

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

Date Signed: _____

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.

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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/sc

cc:

