

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201136697
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: July 14, 2011
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 14, 2011 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], JET Coordinator, appeared and testified.

ISSUE

Whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits due to Claimant's alleged noncompliance with Jobs, Education and Training (JET) participation.

FINDINGS OF FACT

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

1. Claimant was an ongoing FIP benefit recipient.
2. Claimant was previously deferred from JET participation but was subsequently medically okayed to participate with JET, subject to lifting and standing accommodations.
3. On 4/25/11, Claimant began attendance at JET.
4. On 5/2/11, Claimant was found noncompliant with JET participation due to an alleged failure to fully cooperate in seeking employment.

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5. On 5/20/11, a triage was held and Claimant was determined to lack good cause for the alleged noncompliance.
6. On an unspecified date, DHS initiated termination of Claimant's FIP benefits effective 6/2011.
7. On 6/2/11, Claimant requested a hearing to dispute the FIP benefit termination.

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.* DHS administers the FIP pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 5/2011, the estimated month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A at 1. Federal and state laws require each work eligible individual (WEI) in a FIP group to participate in Jobs, Education and Training (JET) Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. *Id.* These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth through the Michigan Works! Agencies. *Id.* 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. *Id.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.
- Failing or refusing to appear and participate with JET or other employment service provider.
- Failing or refusing to complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.

- Failing or refusing to develop a Family Self-Sufficiency Plan (FSSP).
- Failing or refusing to comply with activities assigned on the FSSP.
- Failing or refusing to provide legitimate documentation of work participation.
- Failing or refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing or refusing to participate in employment and/or self-sufficiency-related activities.
- Failing or refusing to accept a job referral.
- Failing or refusing to complete a job application.
- Failing or refusing to 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. *Id.*

In the present case, DHS alleged that Claimant failed to fully participate with JET on 4/29/11 and 5/2/11. Though Claimant attended JET on both dates, DHS alleged that Claimant refused to research potential employment opportunities. Claimant responded that she went to JET, was unable to use the computer and was willing to seek employment opportunities but only those that met her medical limitations. The DHS evidence establishing noncompliance had strengths and weaknesses.

The biggest problem with the DHS evidence in establishing noncompliance was that it consisted entirely of hearsay statements. DHS failed to present a JET representative with first-hand knowledge of how Claimant failed to comply with JET participation. DHS was given some leeway in reading from notes made by the JET specialist. Though the undersigned accepted the evidence, it was hampered by its second-hand nature.

The undersigned was concerned regarding the timing of noncompliance. JET found Claimant to be non-compliant with participation only two days into Claimant's time after beginning employment training. Though there was evidence that Claimant was difficult to work with, partially due to her medical limitations, partially due to her lack of computer skills and partially due to a disinterested attitude, two days of working with Claimant is an exceptionally short time to find noncompliance based on an uncooperative attitude.

In fairness to JET and DHS, the undersigned was persuaded by evidence that Claimant failed to follow-up on 40 different job leads given to her. Claimant stated that she looked at all 40 job leads and concluded that none of them were within her physical and mental capabilities. Unfortunately, there was no evidence of what the specific jobs were or why any job was appropriate or inappropriate based on Claimant's limitations; nevertheless,

Claimant conceded that she made no efforts to determine whether the leads were suitable or not. She essentially summarily refused to pursue any of the leads.

The undersigned was also concerned that Claimant could not even bother to follow-up on a recommendation by JET to report to Michigan Rehabilitation Services (MRS). Had Claimant bothered to follow through with the referral, Claimant might have been eligible for a JET deferral while she attended MRS. Claimant responded that she failed to understand what MRS was or why she was being referred there.

There was unquestionably some basis to find noncompliance by Claimant in her JET participation. Claimant's participation with JET was lackluster and half-hearted. The undersigned has some appreciation that Claimant at least attended JET, albeit in a half-hearted effort to seek employment.

The two day timeframe in which Claimant was found noncompliant amounted to giving up hope on Claimant legitimately pursuing employment. However, in determining Claimant's compliance level, the undersigned is sympathetic that JET was a new environment for Claimant and that Claimant would be uncomfortable in the environment. Perhaps a longer period of time at JET would not have changed Claimant's attitude, however, the undersigned is unconvinced that two days was a sufficient period of time to determine that assisting in Claimant's pursuit of employment was pointless. Based on the totality of evidence, the undersigned is slightly more inclined to find that as of the date of noncompliance, Claimant was compliant with JET participation. Accordingly, the DHS termination of FIP benefits based on noncompliance with JET participation was improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefits effective 6/2011. It is ordered that DHS shall:

- (1) reinstate Claimant's FIP benefits back to 6/2011;
- (2) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance; and
- (3) remove any disqualification from Claimant's disqualification history as a result of the improper finding of non-compliance.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

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Date Signed: July 18, 2011

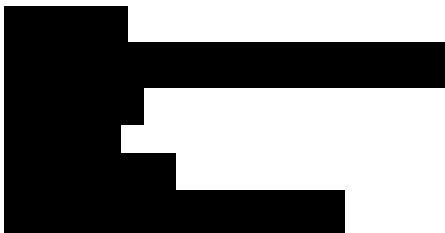
Date Mailed: July 18, 2011

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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