

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

IN THE MATTER OF

[REDACTED]

Reg. No: 2011-36854

Issue No: 1038

[REDACTED]

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received on May 31, 2011. After due notice, a telephone hearing was held on July 14, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly terminated and sanctioned 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. Claimant was a mandatory WF/JET participant. (Hearing Summary).
2. On January 18, 2011, WF/JET received a message from Claimant stating she was uncertain on how often she needed to check in, and that due to a death in her family, she would not be at the job search check-in. (Department Exhibit 3).
3. On January 28, 2011, WF/JET noted Claimant had not checked in to update her employment information in the past two weeks and as a result, received a missed assignment. (Department Exhibit 3).
4. On February 10, 2011, during Claimant's Individual Service Strategy (ISS) update, the WF/JET case manager noted that Claimant had not shared any further barriers to continued employment. (Department Exhibit 3).

5. On February 11, 2011, Claimant had not checked in the last two weeks and received a second missed assignment. (Department Exhibit 3).
6. On February 16, 2011, the WF/JET case manager received a call back from Claimant. Claimant stated that she was not aware that she had to check in since she was working 30 hours a week. The case manager reminded her that as long as she is receiving FIP, she is required to check in bi-weekly when she is employed at least 30 hours a week. Claimant was going to fax in her paystubs for the past month because she had not provided any for that time period yet. (Department Exhibit 3).
7. On February 24, 2011, the WF/JET case manager received Claimant's faxed employment verification from Claimant's employer, verifying Claimant was working 30-40 hours a week, at [REDACTED] an hour, and receiving [REDACTED] a week. Because the weekly salary did not equal 30 hours at [REDACTED] a week, the WF/JET case manager called Claimant for verification, as [REDACTED] a week equals 19 hours a week, which is less than the required 30 hours Claimant is required to complete. Claimant did not answer and the case manager left a message requesting a return call. (Department Exhibit 3).
8. On March 18, 2011, the WF/JET case manager received a call from Claimant who stated that she was no longer employed. Claimant was informed she was to reengage with job search and attend WF/JET on March 22, 2011 at 9 A.M. (Department Exhibits 2-3).
9. On March 31, 2011, Claimant did not report for job search, and had not reported in on March 22, 2011 for job search. Therefore, she received a third missed assignment and was referred to Triage. (Department Exhibit 2).
10. On April 26, 2011, Claimant attended the Triage on April 26, 2011. Claimant informed the department of her ulcerative colitis and requested a deferral from WF/JET. Claimant was instructed to submit medical documentation from her doctor stating she needed to be deferred from the program for medical issues. (Department Exhibit 1).
11. On May 2, 2011, Claimant timely returned the Medical Needs (DHS-54A) on which her doctor indicated Claimant has left sided ulcerative colitis, the treatment of which is prescription medication. The doctor indicated that Claimant could work at her usual occupation, but with limitations writing, "may need frequent breaks due to exacerbation of chronic conditions." (Department Exhibits 6-16).
12. The department mailed Claimant a Notice of Case Action on May 20, 2011, informing Claimant that her FIP program was being closed as of June 1, 2011, because she failed to participate in employment and/or self-sufficiency related activities and because this was at least her second noncompliance,

her group would not receive benefits from June 1, 2011 through August 31, 2011. (Hearing Summary).

13. Claimant submitted a hearing request on May 31, 2011, protesting the closure of her FIP benefits. (Request for a Hearing).
14. This is Claimant's second non-compliance with the FIP program. (Department Exhibits 17-18).

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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), Reference Table Manual (RFT), and the Reference Tables Manual (RFT).

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 Licensing and Regulatory Affairs (LARA) 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.

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).
 - .. 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 (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. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period.

The department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within 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. A claim of good cause must be verified and documented for member adds and recipients. 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.

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.

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

- . For the first occurrence on the FIP case, close the FIP for not less than 3 calendar months unless the client is excused from the noncompliance as noted in “First Case Noncompliance Without Loss of Benefits” below.
- . For the second occurrence on the FIP case, close the FIP for not less than 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

In this case, Claimant was required to participate in the WF/JET program as a condition of receiving her FIP benefits. Claimant failed to meet her minimum 30 hours a week of WF/JET participation and Claimant was referred to Triage. A Triage was held on April 26, 2011. Claimant informed the department of her need for a deferment based on her ulcerative colitis. The department gave Claimant until May 2, 2011, to submit medical documentation from her doctor that she needed to be deferred because she was unable to work as a result of her ulcerative colitis.

On May 2, 2011, Claimant submitted the Medical Needs form (DHS-54A) which had been completed by her physician. On the form, the doctor indicated that Claimant could work at her usual occupation, but with limitations, because she may need frequent breaks due to exacerbation of her chronic condition.

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. While Claimant's chronic condition is clearly beyond the control of Claimant, her doctor indicated that she could work. Therefore, no good cause was found and Claimant's FIP case was closed.

Claimant testified that the department never told her that she needed her doctor to write that she could not work. However, the Individual Service Strategy Triage Update completed during the Triage and signed by Claimant, states Claimant's action plan will be to submit medical documentation deferring her from the program. Therefore, the Administrative Law Judge finds Claimant was instructed on what she needed to provide from her doctor and Claimant's issue is that the doctor did not agree that she needed to be deferred as indicated when he wrote that she could work at her usual occupation, albeit with limitations.

Claimant stated that she never said that she did not want to work and that she was willing to work. However, she was not going to ride public transportation without a restroom because of her ulcerative colitis. The doctor noted on the Medical Needs form submitted by Claimant that her condition was being controlled by prescription medication.

Claimant testified that she just needed to be deferred for a few months while she found safer housing for herself and five children. Claimant stated that there had been several murders in her neighborhood recently and she was afraid to leave her children, aged 8 to 16 years old alone while she participated in Work First/JET.

The Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause. The department held the Triage and on hearing Claimant's good cause reason for not complying with her minimum 30 hours of weekly participation, gave Claimant a week to provide the medical documentation excusing her from participating. However, the medical documentation submitted by Claimant indicated that Claimant could work, with

limitations. Therefore, the department could not find good cause for Claimant's noncompliance based on the documentation she submitted.

DECISION AND ORDER

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

It is SO ORDERED.

_____/s/_____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/15/11

Date Mailed: 7/15/11

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 receipt 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.

VLA/ds

