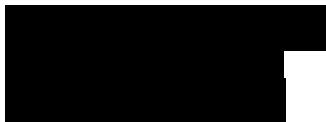


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201137975
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: July 18, 2011
Wayne County DHS (41)

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 18, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], [REDACTED], Manager, 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 an ongoing JET participant.
3. On an unspecified date in 1/2011, Claimant informed her JET and DHS specialist that she was going to have knee surgery on 1/11/11 and would be absent from JET for an unspecified period.
4. Claimant verified the surgery with her assigned JET worker.
5. Claimant was absent from JET beginning an unspecified date in early 1/2011.

6. Claimant's DHS case was subsequently transferred to a new DHS office.
7. On 2/25/11, a Notice of Noncompliance was mailed to Claimant informing her of a triage to be held on 3/2/11 concerning Claimant's absence from JET beginning 1/7/11.
8. Claimant failed to attend the triage.
9. DHS determined that Claimant had no good cause for the absence from JET.
10. On an unspecified date, DHS initiated termination of FIP benefits to be effective 4/2011.
11. On 5/31/11, 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 3/2011, 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.*

The WEI is considered non-compliant for failing or refusing to appear and participate with JET or other employment service provider. *Id.* at 2. Note that DHS regulations do

not objectively define, “failure or refusing to appear and participate with JET”. Thus, it is left to interpretation how many hours of JET absence constitute a failure to participate.

DHS regulations provide some guidance on this issue elsewhere in their policy. A client’s participation in an unpaid work activity may be interrupted by occasional illness or unavoidable event. BEM 230 at 22. A WEI’s absence may be excused up to 16 hours in a month but no more than 80 hours in a 12-month period. *Id.*

In the present case, it was not disputed that Claimant was absent from JET beginning 1/7/11 through at least 2/25/11. Claimant’s length of absence is sufficient to establish potential noncompliance by Claimant.

Claimant stated that she had invasive knee surgery on 1/7/11 and could not attend JET for an indefinite period following her surgery. Claimant also testified that she verified this information with her JET specialist and that she should not have been noncompliant for a time she was excused from JET. There was no testimony from a JET representative that could confirm or refute Claimant’s testimony.

Claimant provided medical records following the hearing which verified that her surgery occurred on 1/11/11 following a 1/2/11 medical examination. The records verified that the surgery was a removal of hardware in Claimant’s knee which was becoming increasingly painful for Claimant. The records failed to specify a specific period required for recuperation. The presented records tended to verify a serious enough surgery whereby a few weeks off from JET participation would be reasonable. That Claimant was given a spinal anesthetic prior to the surgery and transferred by stretcher following the surgery tend to support the serious nature of the surgery.

The undersigned had some concerns about Claimant’s testimony. First, Claimant failed to bring evidence of her surgery to the hearing. Claimant cleared up that issue by submitting the documents following the hearing. Claimant also could have resolved this issue at her triage but she did not attend. Claimant states she did not know about the triage, but there is no supporting evidence explaining why Claimant would not have known about the triage. The undersigned was also concerned that Claimant did not submit the medical documents to DHS until 6/2011, two full months after Claimant should have received a notice of a triage and notice that her FIP benefits were terminating.

However, Claimant’s testimony was not refuted by any persons from JET. Generally, the undersigned finds favorably for a side that provides testimony in the absence of evidence from the opposing side. The testifying DHS representative pointed out that the JET notes made no reference to any communication from Claimant concerning the surgery. The undersigned is not inclined to draw any conclusion from the absence of an

entry. The much more persuasive evidence would have been the testimony of Claimant's JET specialist denying any contact from Claimant.

The undersigned also was concerned about the timing of transfer for Claimant's case. DHS transferred Claimant's benefits case during the time of alleged noncompliance. The foreseeable result of the transfer is that the new DHS office would be ignorant of Claimant's circumstances unless they were well documented by the previous DHS worker. Thus, the new DHS worker held a triage to determine whether Claimant was noncompliant with JET participation without any first-hand knowledge of Claimant's circumstances.

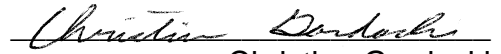
Overall, Claimant's testimony and actions were more persuasive than not concerning whether: Claimant had a medical excuse for failing to attend JET in 1/2011; DHS and JET knew, or should have known, of the medical excuse and whether JET and DHS failed to consider Claimant's excuse in determining whether Claimant was noncompliant with JET participation. It is found that Claimant was compliant with JET participation. Accordingly, it is found that DHS erred in terminating Claimant's FIP benefits by finding that Claimant was noncompliant with JET participation.

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 4/2011. It is ordered that DHS shall:

1. reinstate Claimant's FIP benefits effective 4/2011;
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

Date Signed: July 22, 2011

Date Mailed: July 22, 2011

201137975/CG

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.

CG/hw

cc:

