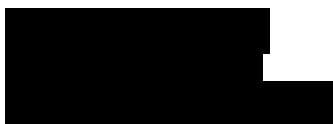


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-38760  
Issue No: 1038



Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the client's (also referred to "the claimant") request for a hearing received on June 13, 2011. After due notice, a telephone hearing was held on August 11, 2011. The claimant personally appeared and provided testimony.

**ISSUE**

Did the department properly terminate and sanction the 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. The claimant was active for FIP and was a mandatory WF/JET participant who was required to submit at least 20 (twenty) hours of employment-related activity every week. (Department Exhibits 15 & 16).
2. On March 21, 2011, the claimant attended orientation and began her job search activities. (Department Exhibit 12). The claimant did not report having any medical problems that would affect her ability to participate in JET activities at the time. (Department Exhibits 15 & 16).

3. During the weeks of March 27, 2011, April 3, 2011 and April 10, 2011, the claimant failed to produce any job search activity. (Department Exhibits 14-16, 20-22).
4. On April 21, 2011, the department mailed the claimant a Notice of Non-Compliance (DHS-2444) for failure to participate in JET related activities. (Department Exhibit 1). A triage was scheduled for May 10, 2011 at 1:40 p.m. (Department Exhibit 12).
5. The claimant appeared at the triage on May 10, 2011. (Department Exhibit 12). At triage, the claimant stated that she had medical problems and that the family health center indicated she could not return to work. (Department Exhibit 12).
6. At triage, the claimant produced a medical “excuse slip” from the Vascular Health Center. The note indicated the following: (1) that the claimant saw the doctor on April 17, 2011, (2) that she is unable to return to work at this time because (no reason given) and (3) that she was restricted to no prolonged standing. (Department Exhibit 17).<sup>1</sup> The claimant had not produced this information prior to the triage. (Hearing Summary).
7. On March 17, 2011, the department found that the claimant failed to show good cause for her non compliance. (Department Exhibit 12). This was the claimant’s 4<sup>th</sup> non compliance with JET. (Department Exhibits 12 & 13).
8. On June 7, 2011, the department mailed the claimant a Notice of Case Action (DHS-1605) informing the claimant that her FIP program was being closed for 12 (twelve) months beginning July 1, 2011 because she failed to participate in employment and/or self-sufficiency related activities. (Department Exhibits 4-7).
9. On June 13, 2011, the claimant submitted a hearing request challenging the closure of her FIP benefits. (Request for a Hearing).

### **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.* 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

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<sup>1</sup> The JET office believed that the claimant’s excuse slip was suspicious because they felt portions of the medical slip appeared to have been altered by someone other than the physician who signed the note.

Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Energy, Labor and Economic Growth (DELEG) 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.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency-related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A. 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) or PRPFC.

- .. Appear for a scheduled appointment or meeting related to assigned activities.
  - .. Provide legitimate documentation of work participation.
  - .. 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. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A. DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking. BEM 233A. Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. This does not include applicants. BEM 233A.

The department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within 3 (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. BEM 233A. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A. 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. See “School Attendance” BEM 201 for good cause when minor parents do not attend school. 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.

Good cause includes the following:

- . **Employed 40 Hours.** The person is working at least 40 hours per week on average and earning at least state minimum wage. BEM 233A.
- . **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. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A.
- . **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. BEM 233A.
- . **Reasonable Accommodation.** The DHS, 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. BEM 233A.
- . **No Child Care.** The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client’s home or work site. BEM 233A.

- . **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions. BEM 233A.
- . **Reasonable distance.** The total commuting time to and from work and child care facilities does not exceed three hours per day. BEM 233A.
- . **Suitable provider.** The provider meets applicable state and local standards. Also, providers (e.g., relatives) who are NOT registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. BEM 233A. (See BEM 704.)
- . **Affordable.** The child care is provided at the rate of payment or reimbursement offered by DHS. BEM 233A.
- . **No Transportation.** The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. BEM 233A.
- . **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. BEM 233A.
- . **Unplanned Event or Factor.** Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. BEM 233A. Unplanned events or factors include, but are not limited to the following:
  - . Domestic violence.
  - . Health or safety risk.
  - . Religion.
  - . Homelessness.
  - . Jail.
  - . Hospitalization. BEM 233A.

- . **Comparable Work.** The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit. BEM 233A.
- . **Long Commute.** Total commuting time exceeds:
  - . Two hours per day, NOT including time to and from child care facilities, **or**
  - . Three hours per day, including time to and from child care facilities. BEM 233A.
- . **EFIP.** EFIP unless noncompliance is job quit, firing or voluntarily reducing hours of employment. BEM 233A.
- . **Clients Not Penalized.** Ineligible caretakers, disqualified aliens, and single parents that cannot find appropriate child care for a child under age 6 are not required to participate. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for 3 calendar months unless the client is excused from the noncompliance as noted in "First Case Noncompliance Without Loss of Benefits" below. BEM 233A
- . For the second occurrence on the FIP case, close the FIP for 3 calendar months. BEM 233A.
- . For the third and subsequent occurrence on the FIP case, close the FIP for 12 calendar months. BEM 233A.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

A penalty is not imposed if the client establishes good cause within the negative action period. BEM 233A. When that occurs, the client should be sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A. A new referral should not be entered on ASSIST. BEM 233A. However, if the client does not provide a good cause reason within the negative action period, the department will determine good cause based on the best information available and allow the case to close. BEM 233A.



**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.

CAP/ds

■ [REDACTED]