

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

IN THE MATTER OF:



Registration No: 2011-38930
Issue No: 1038
Case No: [REDACTED]
Hearing Date: August 3, 2011
Eaton 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 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, based on a determined first 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. Claimant applied for FIP benefits on February 18, 2011. Along with her application, Claimant provided a physician's note indicating that she was unable to work until April 4, 2011. (Department's Exhibits D-1; D-2.)
2. Claimant attended an in-person interview with her Department caseworker on March 14, 2011. Claimant was informed at that time that if she anticipated being deferred from WF/JET work activities for more than one month, it would be necessary to begin the medical review team (MRT) process. On the same date, Claimant was provided a verification checklist that was due March 24, 2011. (Department's Exhibit D-3; Department representative's hearing testimony, August 3, 2011.)
3. Claimant's FIP benefit case was opened by the Department on March 14, 2011. (Department representative's hearing testimony.)

4. On April 4, Claimant notified the Department that "I am certain I will feel well enough to begin [WF/JET work activities] by mid or middle April." She requested an extension for submitting the requested verifications; the Department extended the due date to April 8, 2011. This deadline was subsequently extended to April 18, 2011. (Department's Exhibits D-3; D-4; Department representative's hearing testimony.)
5. On April 26, Claimant called her caseworker and stated she "thinks she can go to [WF/JET] after [May 6, 2011]." At that time, Claimant's caseworker assigned her to begin WF/JET activities on May 9, 2011. (Department's Exhibits D-5; D-6.)
6. On May 9, 2011, Claimant submitted a physician's note indicating that she suffered from fibromyalgia, fatigue, and insomnia. The note, however, failed to provide any statement that Claimant was unable to attend or participate in WF/JET activities. (Department's Exhibit D-7.)
7. The Department notified Claimant on June 1, 2011, that she was determined to be in noncompliance with WF/JET work requirements due to her failure to attend the May 9, 2011, assignment. A triage meeting was scheduled to be held on June 9, 2011, to discuss the agency's action with Claimant. (Department's Exhibit D-8.)
8. Claimant attended the triage meeting on June 9, 2011. At that time, she agreed to provide medical documentation to the Department, or participate in WF/JET, by June 14, 2011. (Department's Exhibit 9.)
9. On June 10, 2011, Claimant submitted a WF/JET medical needs form (DHS-54-E) to the Department. This form stated that Claimant could work "at any job," but with limitations, including no heavy lifting, stand and/or walk less than two hours in an eight-hour workday, and sit less than six hours in an eight-hour work day. (Department's Exhibit 10.)
10. Claimant failed to appear for her scheduled June 14, 2011, WF/JET activity. (Department representative's hearing testimony.)
11. On June 15, 2011, the Department notified Claimant that her FIP benefit case would close, effective July 1, 2011, and that she would be sanctioned from the program for three months due to her failure to comply with WF/JET requirements. (Department's Exhibit D-11.)
12. From the Department's FIP case closure determination and three month penalty, Claimant filed a request for hearing. (Claimant's hearing request, dated June 20, 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 determined that no good cause existed for Claimant's first failure to comply with WF/JET requirements; specifically, her failure to provide requested medical verification that she was unable to participate in WF/JET work requirements, and her failure to attend an assigned WF/JET activity. Claimant's FIP benefit case was to close and she was to be sanctioned from the program for three months. From this determination, Claimant 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, it was undisputed that Claimant was temporarily deferred from the WF/JET program from her March 13, 2011, application date through April 18, 2011. However, although she was provided multiple opportunities to submit medical documentation establishing her inability to attend or participate in WF/JET work requirements, she failed to do so. In fact, her treating physician unambiguously stated on June 10, 2011, that Claimant was able to work, albeit with some minor limitations.

According to Claimant, however, she "was not under the correct impression" regarding the verification documentation requested by the Department. (Claimant's hearing testimony, August 3, 2011.) Claimant further testified that in addition to her fibromyalgia and other listed conditions, she was also suffering from the side effects of medication changes. She stated that her physician filled out her paperwork incorrectly, failing to include these side effects. Claimant brought a note from her physician to the hearing; according to this note, signed on August 1, 2011, she was having many medication side effects "requiring her to be off from work." (Claimant's hearing testimony.) Claimant further testified that she was now "more than ready to start WF/JET . . . the [medication] side effects are gone." (Claimant's hearing testimony.)

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).

Here, viewing the testimony and other evidence in its entirety, it cannot be reasonably concluded that Claimant met her burden of demonstrating good cause for her first noncompliance with assigned WF/JET program requirements for the time period in issue. The medical documentation submitted by Claimant prior to the Department's notice of case action clearly established that she was capable of participating in WF/JET activities. It was not until after negative action was taken by the agency that Claimant provided testimony regarding a note from her treating physician purporting to state she was unable to work due to various side effects of medication. Furthermore, this document was apparently written by Claimant's physician on August 1, 2011. But, only three days later, Claimant testified that there were now no more side effects, after having them for approximately seven months, and that she was now prepared to participate in WF/JET activities. It is simply unreasonable to conclude that Claimant's treating physician would state on June 10, 2011, that Claimant could work at any job,

albeit with certain minor limitations, if she was concurrently suffering from debilitating medication side effects, and yet also state on August 1, 2011, that she was unable to work due to such side effects. This conclusion is especially valid in light of the number of opportunities Claimant was provided by the Department to submit medical documentation prior to the negative action taken against her.

If Claimant is now, in fact, medically capable of engaging in WF/JET work requirements, she is encouraged to reapply for FIP cash benefits after completing the three-month sanction period.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department properly determined that Claimant was noncompliant with WF/JET work activity requirements without good cause. Based on this determination, the agency properly terminated and sanctioned Claimant's FIP benefits for at least a three-month period, beginning July 1, 2011.

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

It is SO ORDERED.

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

Date Signed: 8/15/11

Date Mailed: 8/15/11

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.

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.

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