

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

IN THE MATTER OF:



Reg. No.: 201144044
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: August 17, 2011
Macomb County DHS (20)

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 August 17, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Michigan Works! Representative, 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 and JET participant.
2. Claimant had a 20 hour/week obligation to attend JET.
3. Claimant failed to participate with JET on 6/1/11, 6/2/11, 6/3/11 and 6/6/11.
4. On an unspecified date, DHS scheduled a triage to be held on 7/2/11 to discuss Claimant's basis for good cause for the absences from JET.

5. Claimant attended the triage and contended that he missed JET on dates between 6/1/11-6/6/11 due to issues related to a court date regarding eviction and application for State Emergency Relief.
6. DHS denied Claimant's assertions of good cause, in part, because Claimant failed to provide supporting documentation of his good cause claims.
7. On 7/12/11, DHS mailed a Notice of Case Action informing Claimant that FIP benefits would be terminated effective 8/2011 due to noncompliance with JET participation.
8. On 7/18/11, Claimant requested a hearing disputing 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 7/2011, the 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 noncompliant 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 participation on 6/1/11, 6/2/11, 6/3/11 and 6/6/11. Testimony was given that the missed dates equated to six hours for each day except for 6/3/11 which equated to a three hour absence. Thus, Claimant's absences for 6/2011 amounted to 21 hours in missed time. It is found that DHS established that Claimant's absences were sufficient to establish noncompliance.

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. *Id.* at 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.* at 4. A claim of good cause must be verified. *Id.* at 3.

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. *Id.* at 7. In processing a FIP closure, DHS is required to send the client a notice of non-compliance (DHS-2444) which must include: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration *Id.* at 8. In addition, a triage must be held within the negative action period. *Id.* If good cause is asserted, a decision concerning good cause is made during the triage and prior to the negative action effective date. *Id.*

Claimant contended that he had good cause for the absences from JET due to issues relating to a court-ordered eviction. Claimant testified he had a court date on 6/1/11 in which he was threatened with eviction due to a failure to fulfill his land contract payment terms. He also testified that he went to DHS on 6/1/11 to apply for SER for assistance to pay his home payment arrearage. Claimant testified he went to DHS on 6/2/11 after he already received a notice denying his SER application. Claimant stated that he went to a different agency on 6/3/11 to pursue funds to help him pay the court-ordered amount. Claimant had no explanation concerning his absence on 6/6/11.

Claimant's excuse is fairly persuasive. A court-ordered eviction could easily qualify as an unplanned event that amounts to good cause. However, there are issues with Claimant's excuse.

Claimant did not establish a strong overall effort in attending JET. Claimant only attended JET two days prior to 6/2011, once on 5/23/11 and again on 5/25/11. Claimant was absent from JET on 5/24/11, 5/27/11 and 5/31/11. Claimant's overall JET attendance does not signal serious efforts by Claimant to attend JET. However, Claimant's overall attendance is not in issue, his attendance for 6/2011 is at issue.

Claimant brought documentation to the administrative hearing which tended to verify his whereabouts on 6/1/11, 6/2/11 and 6/3/11. It was not disputed that Claimant had a court date on 6/1/11 and applied for SER on 6/1/11. It was also not disputed that DHS mailed Claimant a denial on 6/1/11 (making it credible that Claimant went to DHS on 6/2/11 to protest the denial). Claimant also provided a letter from the agency in which he sought assistance which tended to corroborate that Claimant spent at last part of 6/3/11 at the agency trying to receive funds in order to stop the eviction.

Looking at the case from the DHS perspective, the undersigned can completely understand why DHS took the actions they did. Claimant barely attended JET. Claimant took for granted that he would be excused from JET attendance by failing to call-in for his many absences. Claimant had an opportunity to verify his excuses at the triage and failed to do so. It is also debatable whether Claimant's excuses justified entire days of absence from JET participation. However, it would also seem that DHS had verification of Claimant's court eviction based on documents he submitted to DHS concerning the SER; thus, Claimant's failure to bring the same documents to triage should not have been problematic for DHS since they already verified the eviction.

Despite the many problems with Claimant's excuses, the undersigned is inclined to find that Claimant established good cause. A court-ordered eviction is a serious and dramatic event which demands attention. Claimant's efforts to attend JET and inform JET were less than half-hearted, but for the days in issue from 6/2011, sufficient excuse was provided to justify Claimant's absences. Claimant's absence from 6/6/11 should not be excused but is not sufficient to establish noncompliance. Accordingly, it is found that Claimant established good cause and that Claimant was not noncompliant with JET participation.

Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. As it was found that Claimant was not noncompliant, it is found that the FIP benefit termination 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 8/2011. It is ordered that DHS:

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- (1) reinstate Claimant's FIP benefits back to 8/2011;
- (2) supplement Claimant for any benefits (including Food Assistance Program benefits) lost as a result of the improper finding of noncompliance; and
- (3) remove any relevant disqualification from Claimant's disqualification history as a result of the improper finding of noncompliance.

The actions taken by DHS are REVERSED.

Christian Gardocki

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

Date Signed: August 19, 2011

Date Mailed: August 19, 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.

CG/hw

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