

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201146884
Issue No. 1038
Case No. [REDACTED]
Hearing Date: September 7, 2011
Wayne County DHS (19)

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 September 7, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is 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. Claimant stopped attending JET in late 4/2011.
4. On 6/28/11, DHS mailed a Notice of Noncompliance scheduling a triage meeting with Claimant on 7/7/11.
5. Claimant failed to attend the triage and DHS determined Claimant had no good cause for the absence from JET participation.

6. On 7/9/11, DHS initiated termination of Claimant's FIP benefits effective 8/2011.
7. On 8/5/11, Claimant requested a hearing to dispute the termination of FIP benefits.

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 6/2011, 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 stopped attending JET in late 4/2011 through the triage date of 7/7/11. The absence is a sufficient time frame to establish noncompliance with JET participation.

It was not disputed that Claimant's brother passed away in late 4/2011 and that Claimant suffered psychologically as a result of the unexpected death. Claimant verified a hospital stay stemming from the tragedy. There was sufficient evidence to find good cause for Claimant's JET absence for the period in late 4/2011 and early 5/2011.

What was in dispute was what occurred in 5/2011. On 5/11/11, JET contacted Claimant concerning her recent failures to attend JET. DHS, relying on JET staff notes, stated that Claimant was given an opportunity to restart JET attendance despite Claimant's recent absences. Claimant contended that on 5/11/11, she was told by JET staff that she was noncompliant with JET participation because of her prior absences, that she needn't bother with further attendance and to await a notice for a triage meeting where she could assert good cause. A determination must be made as to which evidence is more credible.

Claimant's testimony was fairly credible. It is reasonable to believe that JET would have found Claimant noncompliant with participation based on the time missed from 4/24/11-5/8/11. If JET had found Claimant to be noncompliant, then JET would have reasonably advised Claimant to not bother with further attendance.

On the other hand, it is equally reasonable that JET would have overlooked Claimant's 4/24/11-5/8/11 absences. The notes from JET personnel tended to support that Claimant was given an opportunity to continue JET participation following 5/11/11. It would be rather strange for JET to verbally advise Claimant of noncompliance on 5/11/11 and then to continue documenting an expectation of Claimant to return to JET.

The biggest problem with the DHS evidence in establishing noncompliance was that it consisted entirely of hearsay statements. DHS failed to present a JET representative with first-hand knowledge of what occurred at the 5/11/11 meeting between JET staff and Claimant. DHS was given some leeway in reading from notes made by the JET staff, however, this lenience does not necessarily mean the notes are superior to the first-hand testimony of Claimant.

Though the undersigned found the JET notes to be fairly detailed and generally reliable, they are simply not as persuasive as first-hand testimony. Though it is reasonably possible that Claimant was not told to stop attending JET on 5/11/11, based on the evidence presented, it is found that Claimant was told to stop attending JET because of her previous absences. Based on this finding, Claimant cannot be found noncompliant for not attending JET after 5/11/11 because she was told not to attend by JET personnel. Accordingly, the DHS termination of FIP benefits 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 shall:

- (1) reinstate Claimant's FIP benefits back to 8/2011;
- (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: September 14, 2011

Date Mailed: September 14, 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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