

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201147088
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: September 14, 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 14, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Manager, 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. Following a deferral, DHS mailed Claimant a notice to attend JET orientation scheduled for 4/11/11.
3. On an unspecified date, Claimant sent her DHS specialist an email stating that she would not be able to attend the orientation because she would be out of state to help a great uncle.
4. On 5/4/11, a triage was held and DHS determined that Claimant was noncompliant with JET participation.

5. Claimant failed to attend the triage
6. On an unspecified date, DHS initiated termination of Claimant's FIP benefits effective 6/2011
7. On 6/7/11, 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.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.
- Failing or refusing to appear and participate with JET or other employment service provider.
- Failing or refusing to complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.

- Failing or refusing to develop a Family Self-Sufficiency Plan (FSSP).
- Failing or refusing to comply with activities assigned on the FSSP.
- Failing or refusing to provide legitimate documentation of work participation.
- Failing or refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing or refusing to participate in employment and/or self-sufficiency-related activities.
- Failing or refusing to accept a job referral.
- Failing or refusing to complete a job application.
- Failing or refusing to 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. *Id.*

Note that the WEI is considered non-compliant for failing or refusing to appear and participate with JET or other employment service provider. *Id* at 2. 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 failed to attend a scheduled orientation to attend JET on 4/11/11. It was not disputed that Claimant emailed DHS to advise that she would not attend due to her being out-of-state to take care of a great uncle. It was also not disputed that Claimant requested a rescheduling of the appointment. For ongoing JET participants, the analysis starts with considering whether a claimant’s explanation for failing to attend JET amounts to good cause.

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's supposed choice to take care of a great uncle in [REDACTED] instead of attending JET orientation was dubious. It may debatably be good cause if her great uncle's illness is interpreted as an unplanned event. The excuse was not verified. The validity of the excuse can be determined by Claimant's credibility.

Claimant's credibility was hampered by contradictory statements she made about attending the triage. Claimant testified that she attended the triage but was not seen by DHS staff. Claimant wrote that she missed the triage because she was at a hospital. The contradictory statements poisoned all of Claimant's testimony. It is found that Claimant's basis for missing the JET orientation was not credible. Thus, good cause was not established for missing the orientation. However, because the present case involved a missed JET orientation, orientation attendance policy must also be considered.

Either DHS or the one-stop service center may extend the last day the client has to attend orientation, when necessary. BEM 229 at 5. DHS must extend this date directly on MIS before the twentieth day passes. Note that DHS regulations do not specify which event triggers the 20 day timeline.

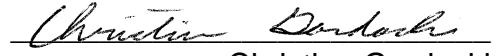
In the present case, Claimant requested a rescheduled orientation prior to the orientation date. The rescheduling of an orientation need only be done "when necessary". Claimant's excuse was already found to be dubious. In such a case, a rescheduling of orientation would not be necessary. Accordingly, Claimant was noncompliant with attending JET orientation and the FIP benefit termination was proper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefits effective 6/2011.

201147088/CG

The actions taken by DHS are AFFIRMED.


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

Date Signed: September 16, 2011

Date Mailed: September 16, 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

cc:

