

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-4865
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 8, 2010
Wayne County DHS (18)

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 December 8, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, [REDACTED], JET Coordinator, appeared and testified. DHS also presented [REDACTED] and [REDACTED] as witnesses.

ISSUE

Whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits due to Claimant's alleged noncompliance with Jobs, Education and Training (JET).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing FIP benefit recipient.
2. As part of Claimant's JET participation requirement, Claimant was assigned an externship at a hotel perform housekeeping duties.
3. On an unspecified date, Claimant and a manager at her externship had a heated verbal exchange in which the manager made unprofessional comments toward Claimant.
4. Following the discussion, Claimant kicked a glass framed door sufficiently hard enough to damage the glass within the door.

5. DHS subsequently scheduled a triage with Claimant and determined that Claimant was noncompliant with JET participation by kicking and damaging a door at an externship site and lacked good cause for doing so.
6. On 10/28/10, DHS mailed Claimant a Notice of Case Action terminating Claimant's FIP benefits beginning 12/2010.
7. On 11/4/10, Claimant requested a hearing disputing 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.* The Department of Human Services (formerly known as the Family Independence Agency) 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 Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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.*

In the present case, DHS determined that Claimant's actions of kicking and damaging a glass door at an externship site was a sufficiently destructive act to justify a finding of

noncompliance. DHS presented no first-hand evidence of the door kicking. DHS presented a written statement from a manager from the externship who was not present for the door kicking describing his version of what occurred. DHS also presented witnesses who worked at the JET worksite that received second-hand versions of the facts surrounding the door kicking. Claimant did not dispute any of the details surrounding the door kicking except that she was unsure if the glass within the door was actually damaged by her kick. Though the DHS evidence concerning the door kicking circumstances was based on second and third-hand accounts, it was sufficiently reliable to be considered. As Claimant did not dispute the allegations, it is found that Claimant did kick a glass door at her externship site. It is also found that such an action is sufficiently disruptive and destructive to justify a finding of noncompliance with an employment related activity.

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.

Claimant's primary argument is that she had good cause because she was essentially provoked by a manager at her externship site. Claimant specifically stated she was needlessly embarrassed in front of other persons by the manager and the basis of the manager's complaint was outside of Claimant's control. Had the Claimant's noncompliance been based on a determination that Claimant failed to adequately perform her duties at her externship; it is highly possible that DHS would be unable to establish noncompliance by Claimant. The undersigned empathized immensely with Claimant over her described circumstances. However, no matter how unjust, unreasonable or insulting the externship manager may have been to Claimant, Claimant's act of kicking and damaging a door is not a basis to find good cause for her act of kicking and damaging a door.

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*.

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Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. The first and second occurrences of non-compliance results in a 3 month FIP closure. *Id*. The third occurrence results in a 12 month sanction. *Id*.

DHS established that all required procedures were met in terminating Claimant's FIP benefits. It is found that DHS properly terminated Claimant's FIP benefits for 12/2010 based on the determination that Claimant was noncompliant, without good cause, with JET participation.

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 beginning 12/2010 based on a determination of noncompliance with JET participation. The actions taken by DHS are AFFIRMED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/14/2010

Date Mailed: 12/14/2010

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.

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