

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2011-49922  
Issue No.: 1038  
Case No.: [REDACTED]  
Hearing Date: September 29, 2011  
Wayne County DHS (49)

**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 29, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Michigan Works! Agency (MWA) representative, 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 had a 35 hour/week obligation to attend JET.
4. Claimant's attended JET for the following amount of hours for the following weeks:
  - Week of 5/2/11-5/6/11- Claimant attended 9 hours (12 hours excused)
  - Week of 5/9/11-5/13/11- Claimant attended 4 hours

- Week of 5/16/11-5/20/11- Claimant attended 0 hours (4 hours excused)
  - Week of 5/23/11-5/27/11- Claimant attended 0 hours
5. On 6/13/11, DHS mailed Claimant a Notice of Noncompliance, which scheduled a triage meeting to be held on 6/21/11.
  6. On 6/21/11, a triage was held (which Claimant attended).
  7. Subsequent to the triage, DHS determined that Claimant lacked good cause for the alleged failure to meet the weekly participation requirement, but allowed Claimant to attend a two day compliance test beginning 6/27/11 in order for Claimant to regain compliance.
  8. JET required Claimant to complete six online applications on 6/27/11 and 6/28/11 in order for Claimant to meet her goals for each day.
  9. JET also required that Claimant provide proof of the applications.
  10. On 6/29/11, Claimant provided JET with verification of 0 applications completed for 6/27/11 and four applications for 6/28/11.
  11. On an unspecified date, DHS initiated termination of Claimant's FIP benefits effective 8/2011 due to alleged noncompliance with JET participation.
  12. On an unspecified date, DHS reduced Claimant's FAP benefits effective 8/2011 due to alleged noncompliance with JET participation.
  13. On 8/12/11, Claimant requested a hearing to dispute the FIP benefit termination and FAP benefit reduction.

### **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 estimated month of the DHS decisions 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, DHS alleged Claimant failed to meet her weekly requirements for JET. Specifically, it was alleged that Claimant missed an entire two week period of attendance from 5/16/11-5/27/11. Claimant responded that she went to her assigned MWA every single day but for some days when she was excused. In response, JET offered to send sign-in sheets which would have verified that Claimant failed to sign-in on all days that Claimant claimed to be at JET. Claimant responded that she might have forgotten to sign-in, but blamed JET for not having a sign-in sheet for days in which she was allegedly absent. JET responded that the sign-in sheet is always available for clients to sign-in during hours of participation.

Claimant's testimony was not credible concerning her claims that she attended JET. It is the client's responsibility to insure that attendance is verified by signing-in. Claimant's claim that she tried to sign-in but was obstructed by JET personnel was improbable. The most probably scenario is that Claimant failed to attend JET and provided false testimony in an attempt to place the blame on JET rather than herself. It is found that Claimant was absent from JET participation for two full weeks.

Two weeks is a sufficient amount of time to establish noncompliance with JET participation. It is found that DHS established noncompliance by Claimant with JET participation.

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*.

How DHS proceeds at the triage is determined by the amount of times a client has been previously found noncompliant. If the triage concerns a first-time noncompliance, DHS is required to (see BEM 233A at 8):

- discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant;
- offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period; and
- advise the client that the instance of noncompliance will remain on record even if the client complies. The noncompliance will be excused, but not erased and could result in longer sanctions if the client is noncompliant in the future.

For the issue of whether DHS properly established noncompliance, Claimant only attempted to argue that she did not fail to attend JET participation, not that she had good cause for missing JET. Thus, good cause cannot be considered as an excuse. DHS established following all necessary triage procedures in finding Claimant was noncompliant. It is found that DHS properly found Claimant noncompliant with JET participation for activities related to the triage held on 6/21/11. However, there is still an issue concerning whether DHS should have terminated Claimant's FIP benefits.

At the triage, DHS offered Claimant an opportunity to complete a two day compliance test prior to the termination of FIP benefits. Claimant accepted the offer.

Claimant was required to complete two full days of JET participation beginning 6/27/11 in order to fulfill the requirements of her compliance test. If she could successfully complete those days, she could successfully continue to receive FIP benefits, though

the previous noncompliance would still be valid. If Claimant failed to complete the compliance test, then Claimant's FIP benefits would properly close based on a finding of noncompliance.

It was not disputed that Claimant returned to JET on 6/27/11 and 6/28/11. DHS contended that Claimant failed to meet the compliance test requirements because Claimant failed to meet the JET imposed requirements of verifying the submission of six online employment applications.

The JET representative provided very credible testimony that she made efforts to explain to Claimant the requirement to apply for six jobs and how to verify that she actually completed the application process for six jobs. It was not disputed that Claimant failed to provide any verification for any submitted applications on 6/27/11 and on 6/28/11 Claimant only verified applying for four jobs. In response, JET found that Claimant failed to meet her compliance test requirements.

Claimant responded that she is learning disabled and struggles with using a computer. Claimant stated she was too embarrassed to mention her difficulties with the MWA worker in front of other JET participants. However, the MWA representative pointed out Claimant had opportunities to discuss the issue with her in privacy, and that Claimant failed to do so.

In determining whether Claimant had good cause for failing to fulfill her compliance test requirements, Claimant will be given a benefit of the doubt. It is debatable whether Claimant deserves to be given any benefit of doubt when Claimant was found lacking in credibility when testifying about absences from JET. Claimant should be given credit for attending JET during her compliance test; mere attendance demonstrates significant effort by Claimant. It is also reasonable for someone that was insecure to be somewhat combative in completing tasks that they were inexperienced and unskilled in completing.

The evidence demonstrated that there was nothing the MWA should have done any differently. The DHS finding that Claimant failed to meet her compliance test requirement was reasonable. The evidence also demonstrated Claimant had opportunities to discuss her concerns with JET and failed to do so. Despite the ample evidence supporting a finding that Claimant failed to meet her compliance test requirements, it is found that Claimant was mentally unfit and had good cause for failing to meet the compliance test. Thus, the termination of FIP benefits was improper.

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the Food Assistance Program pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015.

DHS is to disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP employment requirements, and
- The client is subject to a penalty on the FIP program, and
- The client is not deferred from FAP work requirements
- The client did not have good cause for the noncompliance. BEM 233B at 2.

It has already been found that Claimant had good cause for failing her compliance test and should not have been disqualified from receiving FIP benefits. The same finding applies to the reduction of FAP benefits. It is found that DHS improperly reduced Claimant's FAP benefits.

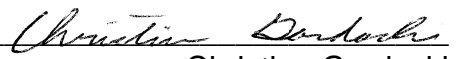
### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly found Claimant to be noncompliant with JET participation concerning the noncompliance that occurred leading up to the triage dated 6/21/11. The actions of a finding of noncompliance (first occurrence) are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefits and reduced Claimant's FAP benefits effective 8/2011 based on the alleged failure by Claimant to pass a compliance test. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefits beginning 8/2011;
- (2) redetermine Claimant's FAP benefits beginning 8/2011 based on the finding that Claimant was not noncompliant with JET participation; and
- (3) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance.

The actions taken by DHS are REVERSED.

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

Date Signed: October 6, 2011

Date Mailed: October 6, 2011

**NOTICE:** Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

CG/hw

cc:

