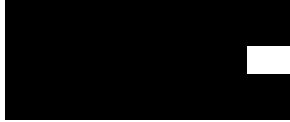


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-5055
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 8, 2010
Wayne County DHS (43)

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; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, 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).

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. Claimant was assigned to participate with JET for an unspecified amount of hours per week.
3. Claimant allegedly failed to sufficiently participate with JET for the weeks beginning 2/7/10 and 2/14/10.
4. DHS scheduled a triage for Claimant on 7/23/10 which Claimant did not attend.

5. DHS failed to hold a triage meeting because of Claimant's lack of attendance and presumed that Claimant was noncompliant with JET participation.
6. DHS terminated Claimant's FIP benefits and reduced Claimant's FAP benefits based on the finding of noncompliance effective 12/2010.

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 (DHS), formerly known as the Family Independence Agency, administers the FIP program pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. 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.* 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.

The only evidence that DHS presented to establish Claimant's noncompliance were documented notes purportedly made by a person from Claimant's JET site. The notes stated that Claimant "has not met any of his job search hours" for weeks 2/7/10 and 2/14/10. The undersigned is not inclined to accept hearsay statements, made by a person who may or may not have knowledge of Claimant's attendance as the sole basis to establish noncompliance. The submitted notes also had other problems of reliability.

First, DHS was unable to explain why a 7/23/10 note indicated that Claimant was a no call, no show. If Claimant was a no call/no show on 7/23/10, it would appear that Claimant attended JET for several months following the alleged 2/7/10 and 2/14/10 weeks of alleged noncompliance. The undersigned cannot help but question why DHS would document a 7/23/10 no call/no show absence if the basis for noncompliance occurred in 2/2010.

DHS could not even testify to the amount of weekly hours Claimant was required to attend JET. The undersigned cannot reasonably find that Claimant failed to meet a JET participation requirement without knowing what the JET requirements were.

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. BEM 233A at 7. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. *Id.*

The DHS evidence of noncompliance was not bolstered by the DHS actions regarding holding a triage. DHS regulations clearly require DHS to make findings of good cause even if a client fails to attend a triage. In the present case, DHS concedes not holding a triage solely based on Claimant's absence from the triage meeting.

Claimant testified that he continually attended JET and was not noncompliant. Claimant only indicated this after stating he did not see any point in attending JET, that he had medical issues with himself, his daughter and his mother that should excuse his JET participation. As part of Claimant's evidence of his medical issues was a Medical Needs form which indicated that Claimant has one estimated doctor visit per month to address a diagnosis for prostate cancer. Overall, Claimant's testimony was not particularly credible in establishing that he was compliant with JET participation.

Fortunately for Claimant, the DHS evidence was not reliable or persuasive in establishing that Claimant failed to participate with JET. It is found that DHS did not establish that Claimant was noncompliant with JET participation. Accordingly, it is found that DHS improperly terminated Claimant's FIP benefits and reduced Claimant's FAP benefits based on the improper finding of noncompliance.

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 and reduced Claimant's FAP benefits effective 12/2010. It is ordered that DHS reinstate Claimant's FIP benefits back to the date of closure, supplement Claimant for any benefits not received as the result of the improper termination and to remove any disqualification

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related to the improper finding of noncompliance from Claimant's disqualification history. It is also ordered that DHS reinstate Claimant's FAP benefit amount to the amount Claimant would have received but for the improper finding of noncompliance. DHS shall supplement Claimant for any FAP benefits not received as a result of the improper finding of noncompliance. The actions taken by DHS are REVERSED.

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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cc:

[REDACTED]