

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-51450
Issue No: 1038
Case No: [REDACTED]
Hearing Date: October 26, 2011
Kent County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's August 19, 2011 request for a hearing. After due notice, a telephone hearing was held on October 26, 2011. Appearing with Claimant was [REDACTED]. Department representatives who attended the hearing were [REDACTED] Case Manager, [REDACTED], Family Independence Manager and [REDACTED] JET/CSU Case Manager.

ISSUE

Did the Department properly terminate and sanction Claimant's Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements?

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 actively receiving FIP and was a mandatory participant in the WF/JET program.
2. On or about July 25, 2011, Claimant submitted 40 hours of job lead activity reports from July 17, 2011 through July 23, 2011. (Department Exhibit 5).

3. On July 26 & 27, 2011, JET/WF Case Manager, [REDACTED], verified Claimant's job lead activity by investigating and calling the prospective employers identified by Claimant in her report. (Department Exhibits 5 & 6).
4. According to Claimant's job lead report, Claimant applied at [REDACTED] on [REDACTED] for a cashier position but there were no cashier positions available. Moreover, the company only receives applications at their location on [REDACTED]. (Department Exhibit 6).
5. Claimant's report indicated she applied at [REDACTED] on Leonard Street, but the company was not accepting applications at the time. (Department Exhibit 6).
6. Reportedly, Claimant visited [REDACTED], also on Leonard Street, and spoke with "[REDACTED]" before submitting an application. However, [REDACTED] discovered that the company was not hiring and there was no one named [REDACTED] who worked there. (Department Exhibit 6).
7. Claimant's report indicated that she applied at the [REDACTED] on 28th Street and spoke with "[REDACTED]" however subsequent investigation revealed no "[REDACTED]" was employed for [REDACTED] at that location. (Department Exhibit 6).
8. Claimant also reported that she applied at [REDACTED] for a cashier position, but that there were no "cashier" positions available. (Department Exhibit 6).
9. Claimant identified that she applied at [REDACTED], but when [REDACTED] called the number she discovered that the number was for "[REDACTED]" (Department Exhibit 6).
10. Claimant also applied for a cashier position at [REDACTED] on 28th Street but the business does not hire cashiers; only hires licensed cosmetologists. (Department Exhibit 6).
11. Finally, Claimant reported that she applied at [REDACTED] on 28th Street and spoke with "[REDACTED]" Investigation revealed that [REDACTED] only accepts online applications and that there was no Dave who worked there. (Department Exhibit 6).
12. On August 8, 2011, the Department believed that Claimant's job reports were falsified and it mailed Claimant a Notice of Noncompliance (DHS-2444) which scheduled a Triage for August 18, 2011. (Department Exhibit 8).
13. Claimant attended Triage on August 17, 2011 and insisted that her reports were not falsified. The Department found that she had no good cause. (Department Exhibit 5).

14. On August 17, 2011, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FIP for 3 (three) months effective on September 1, 2011 for failure to participate in required employment activities without good cause. (Department Exhibits 2-4).
15. This is Claimant's second act of noncompliance with the JET program. (Department Exhibits 2-4).
16. Claimant requested a hearing on August 19, 2011. (Request for a Hearing).

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

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 or department) 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 Program Reference Manual (PRM).

DHS policy requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 230A & BEM 233A. The DHS stated focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. BEM 230A & BEM 233A. However, there are consequences for a client who refuses to participate, without good cause. BEM 233A.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency-related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A. The stated goal is to bring the client into compliance. BEM 233A. Department policy recognizes that noncompliance may be an indicator of possible disabilities. BEM 233A. Accordingly, policy provides that the Department must consider further exploration of any barriers. BEM 233A.

Specifically, a Work Eligible Individual (WEI), defined in BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A. As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-related activities, providing legitimate documentation of work participation, etc. BEM 233A. Department policies indicate that noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

A. Failing or refusing to:

1. Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
2. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
3. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
4. Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP) or PRPFC.
5. Appear for a scheduled appointment or meeting related to assigned activities.
6. Provide legitimate documentation of work participation.
7. Participate in employment and/or self-sufficiency-related activities.
8. Accept a job referral.
9. Complete a job application.
10. Appear for a job interview (see the exception below).

- B. Stating orally or in writing a definite intent not to comply with program requirements.
- C. Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- D. Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A, pp. 1-2.

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. BEM 233A. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A.

The following constitute good cause:

1. The person is working at least 40 hours per week on average and earning at least state minimum wage. BEM 233A.
2. The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A.
3. The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client. BEM 233A.
4. The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability. BEM 233A, pp. 3-4.
5. The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is

appropriate¹, suitable², affordable³ and within reasonable distance⁴ of the client's home or work site. BEM 233A.

6. The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. BEM 233A.
7. The employment involves illegal activities. BEM 233A.
8. The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc. BEM 233A, p. 4.
9. Credible information indicates an unplanned event⁵ or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. BEM 233A.
10. The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit. BEM 233A.
11. The client has a long commute where the total commuting time exceeds two hours per day (not including time to and from child care facilities), or three hours per day, including time to and from child care facilities. BEM 233A, pp.4-5.

Department policy establishes noncompliance penalties for active FIP recipients and for member adds. The penalty for noncompliance without good cause is FIP closure. BEM 233A. For the first occurrence on the FIP case, the Department will close FIP for 3 (three) calendar months unless the client is excused from the noncompliance as noted in "First Case Noncompliance Without Loss of Benefits" below. BEM 233A. For the second occurrence on the FIP case, close the FIP for 3 (three) calendar months. BEM 233A.

¹ The care is appropriate to the child's age, disabilities and other conditions. BEM 233A.

² The provider meets applicable state and local standards. BEM 233A. Also, providers (e.g., relatives) who are not registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. See BEM 233A & BEM 704.

³ The child care is provided at the rate of payment or reimbursement offered by DHS. BEM 233A.

⁴ The total commuting time to and from work and child care facilities does not exceed three hours per day. BEM 233A.

⁵ Unplanned events or factors include, but are not limited to the following domestic violence, health or safety risk, religion, homelessness, jail and hospitalization. BEM 233A.

For the third and subsequent occurrence on the FIP case, the Department will close the FIP for 12 (twelve) calendar months. BEM 233A.

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. The Department will locally coordinate a process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the Department shall offer a phone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A.

When a phone triage is conducted for a first noncompliance and the client agrees to comply, the Department completes a DHS-754, First Noncompliance Letter. BEM 233A.

The Department determines good cause based on the best information available during the triage and prior to the negative action date. BEM 233A. Good cause may be verified by information already on file with DHS or MWA. BEM 233A. If the FIS, JET case manager, or MRS counselor do not agree as to whether “good cause” exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement. BEM 233A.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking. BEM 233A. Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. BEM 233A. This does not include applicants. BEM 233A, p. 7.

If the client establishes good cause within the negative action period, the Department shall not impose a penalty. BEM 233A. Policy provides that the Department shall send the client back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

If the client does not provide a good cause reason within the negative action period, the Department shall determine good cause based on the best information available. BEM 233A. If no good cause exists, the Department shall allow the case to close. BEM 233A. If good cause is determined to exist, the Department must delete the negative action. BEM 233A, pp. 10-11.

Policy instructs the Department when to disqualify a FIP and FAP recipient for noncompliance. The Department shall disqualify a FAP group member for noncompliance when:

1. The client was active both FIP and FAP on the date of the FIP noncompliance, and

2. The client did not comply with FIP employment requirements, and
3. The client is not deferred from FAP work requirements and the client did not have good cause for the noncompliance. BEM 233B, p. 1.

This Administrative Law Judge finds that Claimant was noncompliant with WF/JET program requirements when she falsified her July 17, 2011 through July 23, 2011 job search leads. Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). The ALJ does not find Claimant's explanation for the myriad of discrepancies in her job reports to be credible. Ms. Wilhout's presence at the hearing was not necessary for the ALJ to determine that Claimant fabricated her job search activity report. Claimant has not shown good cause for her intentional acts of noncompliance with the JET program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly terminated Claimant's Family Independence Program (FIP) benefits for noncompliance with WF/JET requirements for a period of 3 (three) months effective September 1, 2011.

The department's actions are AFFIRMED.

It is SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/2/11

Date Mailed: 11/2/11

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.

CAP/ds

■ [REDACTED]