

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201152204
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: October 28, 2011
Wayne County DHS (17)

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 October 28, 2011 from Detroit, Michigan. The claimant appeared and testified; Huda Qandah appeared as a translator for Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, [REDACTED], Michigan Works! Agency (MWA) representative and [REDACTED], 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 20 hour/week JET participation requirement.
4. During the week ending 6/11/11, Claimant only participated 6.5 of the required 20 hours.

5. On 6/10/11, Claimant was found to be noncompliant with JET participation due to the failure by Claimant to meet her weekly hourly obligation during the week ending 6/11/11.
6. A triage was held on 7/19/11 which Claimant did not attend.
7. On 8/1/11, DHS initiated termination of Claimant's FIP benefits with an effective date of 9/1/11.
8. On 9/1/11, 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 controlling DHS regulations are those that were in effect as of 8/2011, the 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.*

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.*

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. 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.* A claim of good cause must be verified. *Id.* at 3-4.

It is worth noting that the policy concerning excusable absences and good cause are separate policies. They are located in separate DHS policy chapters.

The above policies are somewhat contradictory in that one regulation states that illness or an unavoidable event is an excused absence but there is a limit of 16 hours of excused absences per month. Under "good cause" regulations, illness or unavoidable events (among other reasons) are good cause for non-compliance; good cause absences are not capped.

The only discernible difference between the two policies is that an "excused" absence does not specifically require verification; absences that are found to be good cause must be verified. The only way these policies can be reconciled is that if a client alleges an unavoidable event led to an absence but the excuse was not verified, the absence could be excused but limited to 16 hours per month. If a client provides verification for the absence, then good cause should be found for any amount of hours needed as good cause hours are not capped.

In the present case, it was not disputed that Claimant had a 20 hour/week participation requirement with JET. It was also not disputed that during the week from 6/3/11-6/10/11 Claimant only met 6.5 of the 20 hour weekly requirement. DHS implied that Claimant was noncompliant with JET participation also based on an alleged failure to fully participate with JET prior to, and following the week ending 6/11/11. However, DHS eventually relented and agreed that the basis for noncompliance was Claimant's lack of participation during the week ending 6/11/11.

Claimant conceded that she failed to meet 13.5 of her required hours for the week ending 6/11/11. Claimant made several excuses for her absence. Claimant stated that her residence was destroyed by fire in 4/2011 and that might have contributed to the

absences for the week in question. Claimant also contended that she sometimes attended JET but was not allowed to stay because of her late arrival.

Claimant's excuses had two specific problems. First, Claimant could not relate any of her excuses to the week in question. Claimant was very uncertain of dates and could not testify with any confidence as to why she was unable to meet the 20 hour per week requirement for the week ending 6/11/11.

Claimant also failed to verify any of her excuses, a requirement for good cause. If Claimant's residence underwent a fire, Claimant should have verified that the fire occurred. It would also be required for Claimant to explain, and possibly verify, why Claimant was prevented her from fully participating with JET two months after the fire occurred. Some leeway could be given on a verification requirement concerning the allegation that JET refused entry to Claimant due to tardiness, however, Claimant's total lack of certainty concerning when this occurred rendered the issue moot.

Though Claimant could not testify with any confidence why she was not fully participating with JET during the week ending 6/11/11, based on the 16 hour excused absence allowance, there is a basis to find that Claimant's absences did not amount to noncompliance. Claimant provided a minimum amount of testimony to establish that she underwent an unavoidable event. Though the event was unverified, Claimant is entitled to 16 hours/month leeway in JET participation. After applying the 16 hour credit to the week ending 6/11/11, Claimant's absences would be nullified and Claimant would not be noncompliant.

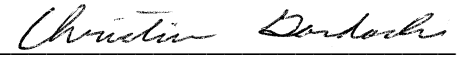
It was not disputed that the FIP benefit termination was solely based on alleged noncompliance with JET participation for the week ending 6/11/11. It is found that Claimant was entitled to a 16 month credit for 6/2011 and was not noncompliant. Accordingly, the FIP benefit termination was improper.

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 effective 9/2011. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefits beginning 9/2011;
- (2) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance;
- (3) remove any disqualification from Claimant's disqualification history 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 31, 2011

Date Mailed: October 31, 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:

