

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201153756
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: October 19, 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 October 19, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, 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. On 7/12/11, DHS mailed Claimant notice of a mass triage meeting to be held on 7/21/11.
3. On 7/21/11, Claimant failed to attend the triage.
4. After the triage on 7/21/11, DHS mailed Claimant a notice scheduling Claimant to attend JET orientation on 8/8/11.
5. On 8/8/11, Claimant failed to attend the orientation.

6. On 8/8/11, DHS initiated termination of Claimant's FIP benefits effective 9/2011 due to Claimant's alleged noncompliance with JET participation.
7. On 9/12/11, 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.* 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.*

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.*

It was not disputed that Claimant failed to attend an orientation for JET on 8/8/11. Missing a scheduled appointment for JET orientation is a basis for DHS to find noncompliance. It is found that DHS established a basis for noncompliance.

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.*

DHS held a mass triage on 7/12/11 for persons that DHS believed should have been ongoing JET participants but were not. DHS indicated on the notice scheduling the triage that Claimant was noncompliant with JET participation since 5/18/11. Claimant conceded that she failed to attend JET since 2010. Claimant also stated that DHS never bothered to resend her after a three month deferral following the birth of a child in 2010. DHS failed to disprove Claimant's statement. Claimant cannot be noncompliant with

JET participation unless DHS can establish that Claimant failed some participation requirement. A failure to attend JET can only be established if there was a notice of an obligation to attend. Thus, the DHS finding of noncompliance cannot be upheld for the alleged noncompliance from 5/18/11.


The subsequent notice of orientation sent to Claimant on 7/21/11 can be a basis for noncompliance. As indicated above, DHS cannot use this as a basis for noncompliance without first scheduling a triage to allow Claimant a basis to assert good cause. DHS cannot meet their triage procedural obligations by relying on a triage held prior to any established noncompliance by Claimant. By allowing such a process would deprive Claimant of the opportunity to assert and establish good cause. Accordingly, it is found that DHS failed to properly terminate Claimant's FIP benefits effective 9/2011.

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 based on the failure to schedule and hold a triage following the alleged noncompliance with JET participation. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefits effective 9/2011;
- (2) redetermine Claimant's FIP benefit eligibility beginning 9/2011 based on the finding that DHS had not held a triage to address Claimant's alleged noncompliance due to the alleged failure to attend JET orientation on 8/8/11; 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 21, 2011

Date Mailed: October 21, 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:

