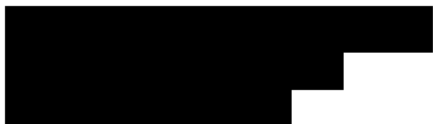


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 2012-10870
Issue No. 1038 3029
Case No. [REDACTED]
Hearing Date: December 8, 2011
Wayne County DHS (55)

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, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), Debra O'Rear, Specialist, appeared and testified.

ISSUES

The first 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.

The second issue is, if the noncompliance is established, whether DHS properly reduced Claimant's Food Assistance Program (FAP) benefits.

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 not an ongoing JET participant.
3. On an unspecified date, DHS mailed notice that Claimant was to attend JET orientation.

4. On 9/12/11, Claimant failed to attend JET orientation.
5. On 9/19/11, DHS mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage to discuss Claimant's failure to attend JET orientation.
6. On 9/27/11, a triage was held and it was determined that Claimant would be given another opportunity to attend JET
7. On 10/5/11, Claimant failed to attend a scheduled JET orientation.
8. On 10/5/11, Claimant faxed DHS a disability certificate which indicated that she was unable to perform work from 8/2011-10/25/11 stemming from injuries Claimant sustained in a 7/2011 vehicle accident.
9. On 10/13/11, initiated termination of FIP benefits and a reduction in FAP benefits effective 12/2011 based on alleged noncompliance due to Claimant's failure to commence JET participation.
10. On 11/4/11, 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 controlling DHS regulations are those that were in effect as of 10/2011, 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 two different JET orientations, one scheduled for 9/12/11 and the second scheduled for 10/5/11. Missing a scheduled appointment for JET orientation is a basis for DHS to find noncompliance with JET participation. It is found that DHS established a basis for noncompliance 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*.

Claimant testified that she missed JET orientations because she is a disabled individual. Claimant stated that she was involved in a vehicle accident in 7/2011 and has to attend physical therapy three times per week to treat her back and neck injuries. Claimant also stated that she takes medications including Vicodin and muscle relaxers which render her disabled.

Claimant's testimony presented two reasons for skepticism. First, Claimant testified that her physical therapy involved various activities including exercising and running on a treadmill. Generally, running on a treadmill is not representative of a person who is incapable of attending JET. If Claimant is capable of running, Claimant should be capable of performing the generally sedentary activities required for JET participation.

Claimant was also not assisted by her lack of prior JET participation. Claimant was not attending JET prior to her vehicle accident when she had no physical obstacles.

At the hearing, Claimant presented a disability certificate from her physician. The certificate was completed by Claimant's physician and noted that Claimant was unable to perform work from a period that covered both JET scheduled orientation dates which Claimant failed to attend. Claimant also presented a fax transmission which tended to verify that Claimant faxed the document to DHS on 10/5/11. Based on the evidence, Claimant established a basis for deferral from JET participation based on a short-term disability.

When an individual claims to be disabled or indicates an inability to participate in work or the work participation program for more than 90 days because of a mental or physical condition, the client should be deferred in Bridges. BEM 230A at 10. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. *Id*. For an inability to attend JET for a period of less than 90 days, DHS is to verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - Work Participation Program, or other written statement from an MD/DO.

There was some dispute whether Claimant informed her specialist that she was unable to attend JET or just needed accommodation so Claimant could attend physical therapy appointments. However, Claimant's verification that a disability certificate was faxed to DHS on 10/5/11 should have provided DHS with notice that she was claiming a basis for deferral from JET. The disability certificate from Claimant's physician concluded that Claimant is not capable of performing work for a two month period which is the equivalent of a conclusion that Claimant could not attend JET. It is found that Claimant verified a basis for JET deferral based on a physical incapacity. Accordingly, Claimant established good cause for not attending JET orientation and the DHS FIP benefit termination is found to be 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 FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001- 3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RTM). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

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

There was no dispute that the FAP benefit reduction was solely based on Claimant's alleged noncompliance with JET participation. Based on the finding that the non-compliance finding was improper, it must also be found that the FAP benefit reduction was also improper. It is found that DHS improperly reduced Claimant's FAP benefits due to employment-related activity disqualification.

It should be noted that the previously submitted certificate has expired. DHS may refer Claimant back to JET though Claimant should also be provided an opportunity to verify a disability if one is still claimed.

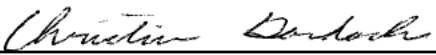
DECISION AND ORDER

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 improperly reduced Claimant's FAP benefits effective 12/2011. It is ordered that DHS:

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- (1) reinstate Claimant's FIP benefits beginning 12/2011;
- (2) supplement Claimant for any benefits lost, including FAP benefits, 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; and

The actions taken by DHS are REVERSED.


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

Date Signed: December 15, 2011

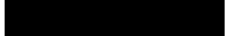
Date Mailed: December 15, 2011


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.

CG/HW

cc:


Wayne County DHS (55)/1843


Christian Gardocki
File