

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-12951
Issue No: 1038
Case No: [REDACTED]
Hearing Date: January 11, 2012
County: Kent

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 request for a hearing received on November 17, 2011. After due notice, a telephone hearing was held on January 11, 2012. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Family Independence Manager), [REDACTED] (Ross/Michigan Works Case Manager).

ISSUE

Whether the Department properly terminated and sanctioned 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 a mandatory WF/JET participant.
2. Claimant, as part of her mandatory participation in the WF/JET program, was required to report to JET 40 (forty) hours of job search activities per week.
3. Claimant wanted to enroll full-time at the [REDACTED].
4. Claimant inquired with her JET caseworker, [REDACTED], regarding whether her courses at the beauty school would count towards her job search activity (known as a "training referral").

5. Claimant was informed that she was required to participate in WorkKeys before she can be eligible for a training referral.
6. On October 10, 2011, Claimant enrolled in the beauty school full time (8:00am to 4:30pm Monday through Friday).
7. Claimant contends that prior to enrollment in the beauty college, JET Caseworker Snyder advised her to enroll in the school and that she would get the training referral eliminating the requirement that she submit the job search reports.
8. On October 24, 2011, Claimant was assigned a new JET caseworker (Edward Jasch). Mr. Jasch requested a Triage because Claimant failed to submit job search activity logs for the week beginning October 10, 2011.
9. On October 31, 2011, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for November 9, 2011 at 9:00am. The deadline for Claimant to show good cause was November 10, 2011. The notice indicated that failure to show good cause could result in loss of benefits.
10. Claimant requested that Ms. Snyder attend the Triage, but her request was refused.
11. On November 9, 2011, Claimant attended Triage but [REDACTED] was to present. The Department found Claimant did not show good cause for failing to turn in her job search logs for October 10, 2011.
12. The Department mailed Claimant a Notice of Case Action (DHS-1605) on November 9, 2011, closing Claimant's FIP benefits for 3 (three) months effective December 1, 2011, due to her failure to participate in employment and/or self-sufficiency related activities.
13. Claimant submitted a hearing request on November 17, 2011, protesting the closure of her FIP benefits.
14. The Department contends that this is Claimant's first non-compliance with the WF/JET program.
15. The hearing packet did not contain any documentation pertaining to the WorkKeys program.
16. Ms. Snyder did not attend the hearing in this matter.

17. During the hearing, the Administrative Law Judge held the record open until the following day (January 12, 2012) at noon (12:00p.m.) so that the JET worker (Mr. Josch) could fax documentation regarding the WorkKeys Program.
18. ██████████ did not provide the Administrative Law Judge with the requested information before the record closed.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. BEM 229. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by the department when the client applies for cash assistance. BEM 229. The Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments are covered by the JET case manager when a mandatory JET participant is referred at application for FIP, when a client's reason for deferral ends, or a member add is requested. BEM 229.

Federal and State laws require each work eligible individual (WEI) in the FIP and Refugee Assistance Program (RAP) group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. WEIs not referred to the work participation program will participate in other activities to overcome barriers so they may eventually

be referred to the work participation program or other employment service provider. BEM 230A.

At application, the Department is required to ensure the client understands his/her responsibility to participate in employment-related activities including, but not limited to, calling before they are unable to attend a meeting or appointment and before they become noncompliant. The Department shall also coordinate with the client an agreed upon date for attendance at orientation. This will eliminate the need for multiple assignment dates or appointment changes. BEM 229.

The work participation program is administered by the Workforce Development Agency, State of Michigan (WDASOM) through the Michigan one-stop service centers. The work participation program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. BEM 230A.

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230A. All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. WEIs who are temporarily deferred are required to participate in activities that will help them overcome barriers and prepare them for employment or referral to an employment service provider. BEM 230A.

An 18 year old adult group member is considered a WEI and must attend the work participation program, regardless of school attendance. BEM 230A. Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A.

Noncompliance also can be found if an applicant, recipient or a member add, without good cause, does any of the following: (1) states orally or in writing a definite intent not to comply with program requirements; (2) threatens, physically abuses or otherwise behaves disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity; or (3) refuses employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. 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 coordinates the 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 client is offered a telephone conference at that time. BEM

233A. Clients must comply with triage requirement within the negative action period. BEM 233A. The department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. BEM 233A.

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. A claim of good cause must be verified and documented for member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. BEM 233A. Good cause should be determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. 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. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. Effective April 1, 2007, the following minimum penalties apply: (1) for the first occurrence on the FIP case, close the FIP for not less than 3 calendar months unless the client is excused from the noncompliance as noted in "First Case Noncompliance Without Loss of Benefits" below; (2) for the second occurrence on the FIP case, close the FIP for not less than 3 calendar months; (3) for the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months. The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

The application forms and each written notice of case action inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify: (1) the action being taken by the department; (2) the reason(s) for the action; (3) the specific manual item(s) that cites the legal basis for an action, or the regulation, or law itself; see BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following: (1) denial of an application and/or supplemental payments; (2) reduction in the amount of program benefits or service; (3) suspension or termination of program benefits or service; (4) restrictions under which benefits or services are provided; (5) delay of any action beyond standards of promptness; (6) for FAP only, the current level of benefits or denial of expedited service. BAM 600.

For each hearing not resolved at a prehearing conference, the department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. The DHS-3050 narrative must include all of the following: (1) a clear statement of the case action, including all programs involved in the case action; (2) facts which led to the action; (3) policy which supported the action; (4) correct address of the AHR or, if none, the client; (5) description of the documents the local office intends to offer as exhibits at the hearing. BAM 600.

During the hearing, the participants may give opening statements. BAM 600. Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. BAM 600. The hearing summary, or highlights of it, may be read into the record at this time. BAM 600. The hearing summary may be used as a guide in presenting the evidence, witnesses and exhibits that support the Department's position. BAM 600. Department workers who attend the hearings, are instructed to always include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BAM 600.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

In this matter, the Department has failed to provide this Administrative Law Judge with the WorkKeys procedures and policies that was crucial to resolution of the issues in this case. Moreover, the Department did not produce Ms. Snyder at the Triage or during the hearing in this matter. The issue in this case concerns a dispute between two versions of events. Claimant contends that Ms. Snyder informed her that she could enroll at the beauty school and that she would get the training referral. The Department, on the other hand, did not produce Ms. Snyder, but relied upon Ms. Snyder's MIS notes. Claimant objected to Ms. Snyder's MIS notes as not authentic. However, Ms. Snyder's MIS notes alone do not assist this Administrative Law Judge resolve this matter. In this instance, Ms. Snyder should have been present during the hearing in order to respond to Claimant's statements and to authenticate her MIS notes under the circumstances. In addition, the undersigned specifically requested that the JET office provide documentation regarding WorkKeys program, but the documents were not provided.

In the instant matter, the Department has failed to clearly communicate to this Administrative Law Judge the precise nature of the Department's actions making it impossible to make a reasoned, informed decision or to provide the Claimant with a fair

hearing. During the hearing, the Department representatives were unable to clearly and succinctly articulate the nature of the Department's actions giving rise to the request for a hearing.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's determination regarding Claimant's FIP is REVERSED and the Department is hereby instructed to reschedule Claimant's Triage appointment and the Department shall make sure that [REDACTED] is in attendance at the rescheduled Triage appointment. The Triage shall be rescheduled within ten (10) days.

It is SO ORDERED.

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

Date Signed: 1/18/12

Date Mailed: 1/18/12

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.

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.

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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/ds

