

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 13134
Issue No.: 1038
Load No.: [REDACTED]
Hearing Date: December 21, 2011
Wayne County DHS (55)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 21, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], FIS, and [REDACTED], FIS, appeared and testified.

ISSUE

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. The Claimant attended JET orientation and was assigned to attend Work First for a total of 20 hours weekly.
3. A triage was held on 10/18/11 which was attended by the Claimant. The Department found that the Claimant had no good cause for her non attendance at the Work First program.

4. The Department offered the Claimant a one time excuse for non compliance without good cause for attendance.
5. The Claimant was required and agreed to attend Work First the following day and to provide proof of her employment income.
6. The Claimant reported to Work First and attended orientation the following day and was directed to report for orientation again the following Monday 9/20/11.
7. The Claimant reported on that date with her child as her day care provider, her grandmother, was unavailable due to her spouse passing that morning.
8. Subsequently, the Claimant attempted to provide a note from her employer who did not complete the note for several days. The Work First program refused to accept the note. The Claimant was paid in cash and could not provide pay stubs.
9. On November 9, 2011, the Department closed the Claimant's FIP case and imposed a 90 day sanction for non compliance with the 754 requirements imposed at the triage.
10. On November 14, 2011 the Claimant requested an administrative hearing to dispute the FIP benefit termination.

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).

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 non deferred individual who is assigned to attend Work First 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 Work First participant's absence may be excused up to 16 hours in a month but no more than 80 hours in a 12-month period. *Id*.

In the present case, Claimant did report as scheduled to attend Work First after her triage. The Claimant's problem with compliance began again when she did not have child care for the following Monday, due to her grandmother's husband's death that morning. The Claimant reported to Work First with her child so that she could advise her Work First representative about the situation. After waiting several hours, the claimant left leaving the representative a note. Subsequently, she heard from the rep and he told her not to come back to the program. The claimant credibly testified that she had arranged child care which was to start that week so she could attend Work First and meet her 20 hour attendance requirement.

The Claimant also credibly testified that she had difficulty with verifying her employment, as she was paid in cash and had no pay stubs. Her employer, a beauty salon owner was not prompt in her response to verify employment. The Claimant was found to have not verified her employment as requested.

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.

Based on the presented evidence, it is found that the Claimant's failure to attend on September 20, 2011 should have been excused, as the death of the spouse of her child care provider was clearly a circumstance not within her control and should have been an excused absence. Additionally, the fact that the Claimant attempted to obtain a letter from her less than cooperative employer and could not verify her employment by check stub should not have been deemed non compliance with the 754 form requirements. This decision was also influenced by the fact that no one from the Work First program who had direct contact with the Claimant attended the hearing. The Work First program

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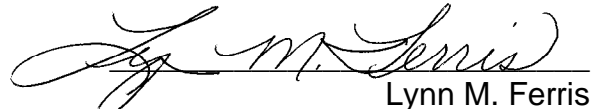
under these circumstances should have assisted the Claimant by contacting her employer and the Department should not have penalized the Claimant by case closure and sanction.

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 11/09/11 based on noncompliance with JET participation. The actions taken by DHS are REVERSED.

Accordingly it is ORDERED:

1. The Department shall initiate reinstatement of the Claimant's FIP case retroactive to the date of closure 11/9/11.
2. The Department shall supplement the Claimant for any FIP benefits the Claimant was otherwise entitled to receive, in accordance with Department policy.
3. The Department shall remove from the Claimant's case record the sanction imposed with the case closure dated 11/9/11.


Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/28/11

Date Mailed: 12/28/11

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:

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- 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

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cc:

