

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

IN THE MATTER OF:



Reg. No: 2012-23827
Issue No: 1038
Case No: [REDACTED]
Hearing Date: February 23, 2012
County: Lenawee

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 January 5, 2012. After due notice, a telephone hearing was held on February 23, 2012. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Jobs Education & Training (JET) worker/Family Independence Specialist).

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 was a full time student attending Washtenaw Community College.
3. Claimant, as part of his required participation in the WF/JET program, agreed to report to JET 30 (thirty) hours of class attendance/participation every week.
4. The Department did not receive Claimant's class attendance/activity logs to the Department for the weeks of October 31, November 7 and November 21, 2011.

5. On November 23, 2011, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because he failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for December 1, 2011 at 1:15pm. The deadline for Claimant to show good cause was December 5, 2011. The notice indicated that failure to show good cause could result in loss of benefits for 6 (six) months based on a second incident of noncompliance with the WF/JET program.
6. On December 1, 2011, Claimant did not attend Triage. The Department found Claimant did not show good cause for his noncompliance.
7. The Department mailed Claimant a Notice of Case Action (DHS-1605) on December 1, 2011, closing Claimant's FIP benefits for 6 months effective January 1, 2012, due to his failure to participate in employment and/or self-sufficiency related activities.
8. Claimant submitted a hearing request on January 5, 2012, protesting the closure of his FIP benefits.
9. Although the Department contends that this is Claimant's second non-compliance with the WF/JET program, the Department did not provide any documentation to show that Claimant had any prior violations.

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.

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. Clients are required to engage in self-sufficiency and family strengthening activities even if they are deferred from work participation program or work activities and may be subject to penalties if they do not participate as required. BEM 230A. Modifications or extra help may include, but are not limited to, the following: (1) reduced hours of required participation; (2) extended education allowances including more than 12 months allowed for vocational education; or (3) extended job search/job readiness time limit. BEM 230A.

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process; (3) develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP); (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview. BEM 233A.

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. BEM 233A. Effective October 1, 2011, the following minimum penalties apply: (1) for the individual's first occurrence of noncompliance, FIP closure is for not less than three calendar months; (2) for the individual's second occurrence of noncompliance, FIP closure is for not less than six calendar months; (3) for the individual's third occurrence of noncompliance, FIP closure is a lifetime sanction. BEM 233A. The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count. BEM 233A.

The sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

Bridges applies noncooperation penalties at an individual level. BEM 233A. Two parent families will have two individual penalty counters. The FIP EDG penalty is applied based on the individual with the highest penalty counter. BEM 233A. In a two parent family, one parent has to reach his/her individual penalty count of three for the case to close for a lifetime sanction. BEM 233A.

Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A.

In this matter, Claimant stated that he attempted to fax the attendance logs to the Michigan Works (MW) office, but the Department did not receive these faxes. Claimant did not keep a fax confirmation sheet to show that the documents were, in fact, faxed to the MW office. The records show that the MW office attempted to contact Claimant to inform him that he failed to turn in his logs via email, but Claimant did not respond. According to Claimant, he does not regularly check his email messages. Claimant also contends that he did not attend the Triage because he did not receive the Notice of Noncompliance (DHS-2444). Claimant does admit, however that he received the Notice of Case Action (DHS-1605). There was no dispute that the Department duly sent both documents to Claimant's Adrian residence at the time. Claimant produced his class schedule, a copy of his grades and a copy of an online map. None of Claimant's proposed exhibits demonstrated that he complied with the WF/JET weekly attendance requirements during the time period at issue. Nor do these documents show that Claimant had good cause for his failure to turn in his weekly attendance logs. The evidence in this record shows that Claimant did not comply with the 30 hour weekly attendance requirements and that he did not have good cause for his noncompliance.

It should be noted; however, that the Department has not established in this hearing record that Claimant had a prior instance of noncompliance with the WF/JET program. Although the DHS-2444 and the DHS-1605 both conclude that this is Claimant's second noncompliance, the hearing record does not provide any objective evidence of a first noncompliance.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause for failing to complete his required attendance activities. As a result, the department properly closed Claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly closed Claimant's FIP case for noncompliance with WF/JET requirements. Consistent with the above reasons and for the reasons set forth on the record, the Department's FIP 3-month sanction is AFFIRMED-IN-PART and REVERSED-IN-PART. The Department's decision to close

Claimant's FIP case for noncompliance is affirmed; however, the Department's 6 month sanction is reversed because the Department did not provide any evidence of a prior instance of noncompliance. Accordingly, this Administrative Law Judge may only authorize the Department to impose a 3 (three) month sanction.

It is SO ORDERED.

/s/

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

Date Signed: 2/29/12

Date Mailed: 2/29/12

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

