

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 2012-38313  
Issue No: 1038  
Case No: [REDACTED]  
Hearing Date: April 11, 2012  
County: Eaton

**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 requests for a hearing received on March 5, 2012, March 12, 2012, and March 23, 2012. All of the hearing requests involved the same issue. After due notice, a telephone hearing was held on April 11, 2012. Participants on behalf of Claimant included [REDACTED] (Claimant's mother/Authorized Hearing Representative (AHR)). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] [REDACTED] (JET-Specialist) and [REDACTED] [REDACTED] (Family Independence 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. The Department received Claimant's Assistance Application (DHS-1171) for FAP, MA and FIP-SDA on September 23, 2011. On the DHS-1171, Claimant identified a possible disability when he noted that [REDACTED] [REDACTED] has a closed head injury and was unable to work.
2. The Department prepared and submitted a medical packet to the Medical Review Team (MRT).
3. On October 27, 2011, Psychologist Roy Meland, D.O., completed a Mental Residual Functional Capacity Assessment (DHS-49-E) form which

indicated that Claimant was unable to work and needs comprehensive rehabilitation to improve function.

4. On November 9, 2011, the Department received Claimant's Medical Needs-JET (DHS-54-E) form prepared by [REDACTED]. [REDACTED] indicated the following on the DHS-54-E form: (1) Claimant had "cognitive disorder secondary to TBI;" (2) Claimant could not work at his usual occupation (re-training); (3) Claimant could work at any job with limitations;<sup>1</sup> (4) Claimant did not need someone in the home to provide care for him; and (5) answered no when asked whether someone on behalf of Claimant cannot engage in work (due to the extent of care required).
5. Claimant attached [REDACTED] Neuropsychological Evaluation dated June 10, 2011 to the DHS-54-E form.
6. On December 20, 2011, the Department mailed Claimant a Work Participation Program Appointment Notice (DHS-4785) which scheduled Claimant's JET appointment for January 3, 2012 at 8:45 a.m.
7. On or about December 27, 2011, JET Specialist [REDACTED] told Claimant's mother over the telephone that Claimant was not required to attend the JET work participation appointment on January 3, 2012.
8. On January 3, 2012, Claimant did not attend the appointment.
9. On February 14, 2012, the Department received a Medical-Social Eligibility Certification (DHS-49-A) where the MRT denied Claimant's disability application.
10. On February 22, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's FIP benefits for the period of 10/16/2011 and ongoing because he "failed to verify or allow the Department to verify necessary information." However, DHS-1605 also indicated the following specialist comments, "The denial reason isn't that you failed to provide the department with verifications timely, the denial reason is that we have submitted your medical records to our medical review team, and it was determined that you are capable of performing other work. The medical review team did not find you disabled."
11. Claimant submitted multiple hearing requests on March 5, 2012, March 12, 2012, and March 23, 2012. In each hearing request, Claimant protested the closure of his FIP benefits.

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<sup>1</sup> Dr. Van Buren-Hay noted on the DHS-54-E form the following, "outside of my scope of practice."

## 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 (RTM), 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 registration support staff must provide clients with a DHS-619, Jobs and Self-Sufficiency Survey. BEM 229. The Department is required to do the following: (1) make a preliminary barrier assessment to determine the client's readiness for work

participation program referral <sup>2</sup>; (2) identify and provide direct support services as needed because child care and transportation barriers are common (DHS is responsible and must assist clients who present with child care or transportation barriers before requiring work participation program attendance); (3) open/edit the Family Self-Sufficiency Plan (FSSP) and enter strength and barrier information identified and addressed during the intake process; (4) temporarily defer an applicant with identified barriers until the barrier is removed; and (5) temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made, such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities.<sup>3</sup> BEM 229.

At application, the Department is required to use the Bridges DHS-1538, Work and Self-Sufficiency Rules, to explain all of the following to clients at FIP application for each episode of assistance: (1) direct support services opportunities, including transportation and child care required to attend orientation; (2) work requirements and reasons why a person may be deferred from the work participation program and work requirements; (3) self-sufficiency requirements; (4) penalties for non-compliance, the triage and hearing processes and good cause; (5) earnings or activity reporting and verification requirements, including the semi-annual reporting requirement for families with earnings; (6) domestic violence; (7) FIP is limited to a 48 month lifetime limit per individual (See BEM 234, FIP Time Limit); and (8) prohibited use of FIP for gambling, massage parlors, spas, tattoo shops, bail-bond agencies, adult entertainment, cruise ships, other nonessential items or to purchase lottery tickets, alcohol, or tobacco. BEM 229.

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 DHS-1538 must be reviewed and signed by all of the following applicants and member adds: (1) adult members; (2) minor parent grantees; (3) deferred and potentially deferred adults; and (4) ineligible grantees. BEM 229. Policy requires the Department file the original signed copy of the DHS-1538, Work and Self-Sufficiency Rules, in the case record and give a photocopy to the client at the in-person interview or mail the client a copy following a phone interview. BEM 229.

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<sup>2</sup> Policy requires the Department to be alert to indicators that the client or family members suffer from undisclosed or undiagnosed disabilities. Some disabilities diminish the individual's ability to recognize or articulate his/her needs or limitations. The Department should temporarily defer clients who need further screening or assessment. BEM 229.

<sup>3</sup> Clients should not be referred for orientation and the work participation program until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. BEM 229.

The Department's computer system ("Bridges") automatically denies FIP applicants still pending or creates a record of noncompliance when a member is added or client whose deferral is ending when attendance at the work participation program is not entered by the one-stop service center by the 22nd day after the day the work participation program referral is made. Bridges also automatically denies FIP when a client fails to continue to participate while the FIP application is pending. Clients can reapply for FIP at any time after their application is denied for failing to appear or participate with the work participation program. BEM 229.

When assigned, clients must engage in and comply with all work participation program assignments while the FIP application is pending. Work participation program engagement is a condition of FIP eligibility. Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. Bridges automatically denies FIP benefits for noncompliance while the application is pending. BME 229.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A.

A disability that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. 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.

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours in which they are engaged, even if they do not meet federal work requirements. 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. 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.

WEIs meeting one of the following criteria are only temporarily not referred to an employment service provider because they may continue to count in Michigan's federal work participation rate. BEM 230A. They are required to participate in activities that will increase their full potential, help them overcome barriers and prepare them for employment or referral to an employment services provider as soon as possible. BEM 230A. If the WEI refuses or fails to provide verification of a deferral when required, the Department will refer him/her to the work participation program. BEM 230A.

A person with short-term incapacity may be deferred for up to 3 (three) months. BEM 230A. A person with a short-term incapacity is a person with a mental or physical illness, limitation, or incapacity expected to last less than 3 (three) months which prevents participation. BEM 230A. The Department will 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 M.D./D.O. BEM 230A. Then, the Department shall set the medical review date accordingly, but not to exceed three months. BEM 230A. Policy specifically prohibits the Department from advising a client with a short-term incapacity to apply for SSI. BEM 230A.

A person with long-term incapacity, or disability, may be deferred. BEM 230A. At intake, redetermination or anytime during an ongoing benefit period, 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. BEM 230A. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A. This may include those who have applied for RSDI/SSI. BEM 230A.

Determination of a long term disability is a two step process. BEM 230A. The client must fully cooperate with both steps. BEM 230A. **Step One: Establishment of Disability.** Once a client claims a disability he/she must provide DHS with verification of the disability when requested. BEM 230A. The verification must indicate that the disability will last longer than 90 calendar days. BEM 230A. If the verification is not returned, a disability is not established. BEM 230A. The client will be required to fully participate in the work participation program as a mandatory participant. BEM 230A. **Step Two: Defining the Disability.** For verified disabilities over 90 days, the specialist must obtain an MRT decision by completing the medical packet. BEM 230A. The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. BEM 230A. If the client does not provide the requested verifications, the cases should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence. BEM 230A. Potentially disabled individuals are not sent to the work participation program while waiting for the verification of disability. BEM 230A.

When the Medical Review Team (MRT) decision and information is received, the Department must determine what accommodations the client needs to participate in the work participation program. BEM 230A. The person must pursue employment and/or self-sufficiency-related activities and the Department must follow the procedure for accommodating disabilities. BEM 230A.

The Department must serve individuals who are determined work ready or work ready with limitations by the Medical Review Team when the individual cannot be served by the work participation program. BEM 230A. These clients have a mandatory participation status in Bridges. BEM 230A. The Department must assign self-sufficiency activities up to the medically permissible limit of the individual. BEM 230A. The Department should ask the work participation program to provide any test results or other documentation about the client's limitations at the time the client is referred back to DHS. BEM 230A.

When a client is determined by MRT to be work ready with limitations becomes noncompliant with the work participation program or his/her assigned activities, the Department shall follow the same instructions outlined in BEM 233A with regard to noncompliance.

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 Family Self-Sufficiency Plan (FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the 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.<sup>4</sup> BEM 233A.

Noncompliance by a WEI while the application is pending results in group ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending must have benefits delayed. BEM 233A. If a WEI applicant refuses suitable employment without good cause while the FIP application is pending (or up to 30 days before the FIP application date), approve FIP benefits no earlier than the pay period following the pay period containing the 30th day after the refusal of employment. A non-WEI who does not complete the FAST within 30 days and the application is still pending is denied FIP. A good cause determination is not required for applicants who are noncompliant prior to FIP case opening. If a WEI member add refuses suitable employment without good cause while the FIP member

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<sup>4</sup> The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

add is pending, close the FIP EDG for the minimum number of penalty months. BEM 233A.

The standard of promptness (SOP) begins the date the Department receives an application/filing form, with minimum required information. The Department must process applications and requests for member adds as quickly as possible, with priority to the earliest application date. BAM 115. For the following programs: FIP, SDA, RAP, CDC, MA and AMP only, the Department must certify program approval or denial of the application within 45 days. BAM 115.

In this matter, the Department has violated Department policy in several respects. First, there is no evidence that the Department complied with BEM 229 which directed the Department not to refer an applicant for orientation and the work participation program until it is certain that barriers to participation have been removed and possible reasons for deferral have been assessed and considered, and that any disabilities have been accommodated. BEM 229. In addition, there is no evidence the Department used the Bridges DHS-1538, Work and Self-Sufficiency Rules, to explain to Claimant at application the work requirements and reasons why a person may be deferred from the work participation program and work requirements. BEM 229. Moreover, the record does not show that the Department coordinated with Claimant an agreed upon date for attendance at orientation, which would eliminate the need for multiple assignment dates or appointment changes. BEM 229. Instead, the Department, on December 20, 2011, mailed Claimant a DHS-4785 and unilaterally scheduled Claimant's JET appointment for January 3, 2012 at 8:45 a.m.

The DHS-4785 should not have been sent to Claimant before Claimant's disability could have been considered and/or accommodated. As indicated above, BEM 230A clearly provides that "potentially disabled individuals are **not** sent to the work participation program while waiting for the verification of disability." (With Emphasis Added). Here, the Department has not shown whether a deferral was considered for Claimant or whether a short-term or long-term disability was properly evaluated. The record in this matter reveals that the Department concedes that Claimant's FIP closure was not based on the failure to return verifications but was based on the alleged inability to establish a disability.

Here, the Department improperly referred Claimant to the JET program. Policy specifically provides that "when a client is determined by MRT to be work ready with limitations becomes noncompliant with the work participation program or his/her assigned activities, the Department shall follow the same instructions outlined in BEM 233A with regard to noncompliance." BEM 233A. Here, the Department failed to follow BEM 233A when it prematurely referred Claimant to JET program.

In addition, the Department did not follow the standard of promptness when it first received Claimant's application. Certainly, the application was not processed "as quickly as possible" nor was it even processed within the requisite 45 day time limit. The



application was received on September 23, 2011 and then Claimant was referred to JET almost 3 months later on December 20, 2011.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, the Department did not properly process Claimant's application for FIP and, as a result, did not properly deny Claimant's FIP application. The department did not properly follow policy with regard to the determination of a deferral prior to the referral to the JET program.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department improperly processed and, then improperly denied Claimant's FIP application. Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

The Department shall: (1) reinstate Claimant's FIP benefits; (2) allow Claimant to re-engage with the WF/JET program; and (3) provide Claimant with any past due FIP benefits due and owing provided by policy from the date of closure to the date of the MRT denial.

It is SO ORDERED.

/s/

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

Date Signed: April 19, 2012

Date Mailed: April 19, 2012

**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

Re consideration/Rehearing Request

P.O. Box 30639

Lansing, Michigan 48909-07322

CAP/ds

cc:

