

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

IN THE MATTER OF:



Reg. No.: 2012-40366
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: April 18, 2012
County: Wayne (82-31)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following claimant's request for a hearing. After due notice, a telephone hearing was held on April 18, 2012, from Detroit, Michigan. Participants on behalf of claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly close claimant's Family Independence Program (FIP) case and sanction claimant for three months for Jobs, Education and Training (JET) noncompliance?

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 a recipient of FIP in Wayne County.
2. Claimant was a mandatory JET participant.
3. Claimant allegedly did not meet participation requirements.
4. No evidence was submitted to show that claimant was failing to meet participation requirements.
5. No evidence was submitted to show how many hours claimant missed, how many days claimant missed, whether claimant was required to attend on certain

days, what claimant's hour requirements were, or how claimant was non-participatory.

6. A triage was properly held, and claimant was deemed compliant.
7. Claimant sent back to JET as part of a "compliance test."
8. Claimant went back to JET, but was told the worker she needed to see was out.
9. Claimant left a note for the worker and attempted to return the following Monday.
10. Claimant's FIP case was immediately sanctioned for 90 days.
11. Claimant was not given a triage.
12. On March 26, 2012, claimant requested a hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full-time must be referred to the JET Program or other employment service provider unless deferred or engaged in activities that meet participation requirements. Clients who have not been granted a deferral must participate in employment and/or self-sufficiency-related activities to increase their employability and to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called “noncompliance.” BEM 233A defines noncompliance as failing or refusing to, without good cause:

“...Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider...” BEM 233A, p. 1.

However, non-participation can be overcome if the client has “good cause.” Good cause is a valid reason for failing to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participatory person. BEM 233A. A claim of good cause must be verified and documented.

The penalty for noncompliance is FIP closure. BEM 233A.

Furthermore, JET participants cannot be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. At these triage meetings, good cause is 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 the Department or MWA. BEM 233A. If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

After reviewing the facts of the case, the undersigned cannot reach the conclusion that claimant missed any hours and was, therefore, non-participatory. This finding renders the necessity of a good cause finding moot, as good cause is not at issue. The issue is not whether claimant had good cause for her failure to participate; the issue is whether claimant failed to participate. The Administrative Law Judge holds that there is no evidence to show that claimant failed to participate to the best of her ability and meet her hour requirements.

At no point does the evidence presented show that claimant failed to meet her hour requirements with the JET program.

The Department was unable to testify as to what days claimant missed, how many hours claimant missed, or what claimant's hour requirements were. No documentation as to these facts was submitted. Therefore, the Department has failed to meet their burden of proof with regard to whether claimant was actually non-participatory.

Furthermore, the Department testified that, at the triage, it was determined that claimant was attending school, which was an approved activity, and claimant was meeting her hours requirements. Therefore, no good cause was needed, as claimant was not non-participatory by the Department's own testimony. Therefore, no sanction could have been applied regarding this set of facts.

Even though claimant was not non-participatory, claimant was returned to JET under a one-day "compliance test," an activity that is not provided for in policy. When claimant allegedly failed this "compliance test," claimant was immediately sanctioned.

Leaving aside the fact that claimant attempted to participate but was apparently turned away, the fact remains that there is no "compliance test" in policy that allows for immediate sanction. If claimant was returned to JET and claimant failed to meet her weekly participation hours (which would be impossible to determine based upon one day), the Department needed to hold another triage and make applicable determinations to hold claimant noncompliant. Immediate sanction was not, and is never, an option.

However, it is unclear that claimant was even non-participatory. Claimant testified that she attempted to return but was turned away because her caseworker was not there. This testimony was not rebutted. Claimant left a note and attempted to return to JET on the next available day. However, at this point, claimant had already been placed into immediate sanction. Claimant made a good faith effort to stay participatory and, therefore, could not have been said to be "failing or refusing" to meet JET requirements, as defined in policy. Therefore, as claimant was not failing or refusing to meet JET requirements, claimant could not even have been returned to triage, much less given a three-month sanction.

The Department has failed to meet their burden in showing that claimant was actually non-participatory; no evidence has been submitted to prove this allegation. Therefore, the sanction against claimant cannot stand.

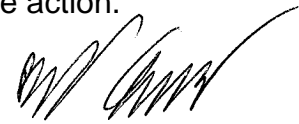
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly when . did not act properly when closing claimant's case and applying the sanction in question. Claimant was in compliance with the JET program during the time period in question.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.

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

1. Remove all negative actions placed upon claimant's FIP case in regard to this action and reschedule claimant for JET activities;
2. Issue claimant any benefits missed as a result of the negative action.



Robert J. Chavez
Administrative Law Judge
for Maura 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. (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:

- 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

RJC/pf

cc:

