

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201243367
Issue No.: 1005
Case No.: [REDACTED]
Hearing Date: May 9, 2012
County: Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

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 May 9, 2012, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED].

During the hearing, both parties stipulated to two prior findings of noncompliance.

ISSUE

Did the Department properly sanction and close the Claimant's case for Family Independence Program (FIP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Prior to January 1, 2012, the Claimant had been found to be noncompliant with the WF/JET program on two other occasions.
2. As of January 1, 2012, the Claimant was receiving FIP benefits.
3. On or around January 18, 2012, a Michigan Works employee contacted the Claimant. During the conversation, the Michigan Works employee told the Claimant she needed to reengage with WF/JET.

4. On January 20, 2012, Michigan Works sent the Claimant a re-engagement letter with a deadline of January 26, 2012.
5. Between January 20, 2012 and January 26, 2012, the Claimant did not re-engage with WF/JET.
6. On February 3, 2012, a Michigan Works employee contacted the Claimant. The Michigan Works employee gave the Claimant until February 6, 2012 to re-engage with WF/JET.
7. Between February 3, 2012 and February 6, 2012, the Claimant did not re-engage with WF/JET.
8. On February 7, 2012, Michigan Works sent the Claimant a second re-engagement letter with a deadline of February 10, 2012.
9. Between February 7, 2012 and February 10, 2012, the Claimant did not re-engage with WF/JET.
10. On February 22, 2012, the Department sent the Claimant a notice of non-compliance. The notice indicated a triage was to take place on March 1, 2012 at 1:30 pm.
11. On March 1, 2012, the Claimant failed to show for the scheduled triage. The triage took place in the absence of the Claimant and the Department determined the Claimant did not have good cause for failing to re-engage in the WF/JET program.
12. On March 8, 2012, the Department sent the Claimant a notice of case action. The notice indicated the Claimant's FIP benefits were closing because the Claimant failed to participate in an employment and/or self-sufficiency related activity.
13. On April 2, 2012, the Claimant requested a hearing in protest of the March 8, 2012 notice of case action.
14. All mailings from Michigan Works and from the Department were sent to the Claimant's last known address on record.

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 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 1999 AC, R 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. Our focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency-related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance.

A Work Eligible Individual (WEI), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

See BEM 233B for the Food Assistance Program (FAP) policy when the FIP penalty is closure. For the Refugee Assistance Program (RAP) penalty policy, see BEM 233C. BEM 233A, p. 1.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to:
 - Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
 - Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
 - Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP) or PRPFC.
 - Appear for a scheduled appointment or meeting related to assigned activities.
 - Provide legitimate documentation of work participation.
 - Participate in employment and/or self-sufficiency-related activities.

- Accept a job referral.
 - Complete a job application.
 - Appear for a job interview (see the exception below).
 - Stating orally or in writing a definite intent not to comply with program requirements.
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- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
 - Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A, pp. 1-2.

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. Document the good cause determination in Bridges and the FSSP under the “Participation and Compliance” tab.

The penalty for noncompliance without good cause is FIP closure. Effective April 1, 2007, the following minimum penalties apply:

- For the first occurrence on the FIP case, close the FIP for 3 calendar months unless the client is excused from the noncompliance as noted in “First Case Noncompliance Without Loss of Benefits” below.
- For the second occurrence on the FIP case, close the FIP for 3 calendar months.
- For the third and subsequent occurrence on the FIP case, close the FIP for 12 calendar months.
- The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties.

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. Locally coordinate a process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. Clients must comply with triage requirement within the negative action period.

Determine good cause 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.

If the FIS, JET case manager, or MRS counselor do not agree as to whether “good cause” exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking.

Note: Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. This does not include applicants. BEM 233A, p. 7.

If the client establishes good cause within the negative action period, do NOT impose a penalty. See “Good Cause for Noncompliance” earlier in this item. Send the client back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. Do not enter a new referral on ASSIST. Enter the good cause reason on the DHS-71 and on the FSSP under the “Participation and Compliance” tab.

If the client does NOT provide a good cause reason within the negative action period, determine good cause based on the best information available. If no good cause exists, allow the case to close. If good cause is determined to exist, delete the negative action. BEM 233A, pp. 10-11.

Disqualify a FAP group member for noncompliance when:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP employment requirements, and
- The client is not deferred from FAP work requirements (see DEFERRALS in BEM 230B), and the client did not have good cause for the noncompliance. BEM 233B, p. 1.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-

related activities, providing legitimate documentation of work participation, etc. BEM 233A.

In this case, the Claimant did not attend her scheduled triage and did not provide the Department with the appropriate reasons as to why she was unable to re-engage with WF/JET in a timely manner. Further more, the reasons provided by the Claimant during the hearing were unsubstantiated. The Claimant provided several different reasons why she was unable to re-engage but failed to provide any evidence to corroborate her claims.

In addition, the Claimant alleged she did not receive the mailings from the Department or Michigan Works. Because the Claimant alleges to have not received the notices, this issue concerns the application of "the mailbox rule."

Under the mailbox rule "a letter mailed in the due course of business is received." *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed. *Good supra* at 275. "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received." *Id* at 276. The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary. See *id*.

The Department and Michigan Works have produced sufficient evidence of its business custom with respect to addressing and mailing of the notices in question. Under the mailbox rule, the mere execution of the DHS forms in the usual course of business rebuttably presumes subsequent receipt by the addressee. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). The Department and Michigan Works have produced sufficient evidence of its business custom with respect to the mailing of the DHS notices allowing it to rely on this presumption. Claimant, on the other hand, argues that she did not receive some or all of the notices. Despite making this argument, Claimant has not come forward with sufficient evidence to rebut the presumption.

Therefore, based on material, competent and substantial evidence, I find the Department properly closed and sanctioned the Claimant's FIP benefits as the Claimant failed to appear for several of the scheduled orientations as well as the triage and the Claimant did not have good cause for her non-participation.

DECISION AND ORDER

I find, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Department did act properly in this matter.

Accordingly, the Department's FIP decision is **AFFIRMED**.

/s/
Corey A. Arendt
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 10, 2012

Date Mailed: May 10, 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

CAA/cr

cc:

