

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

IN THE MATTER OF:



Reg. No: 201246141
Issue No: 1038
Case No: [REDACTED]
Hearing Date: August 16, 2012
Cass County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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. After due notice, a telephone hearing was held on August 28, 2012. The claimant appeared and provided testimony. The claimant appeared with her authorized representative, [REDACTED] [REDACTED]

ISSUE

Did the department properly terminate and sanction the 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 claimant had applied for FIP benefits and was referred to the WF/JET program as a participant.
2. On August 25, 2011, the claimant submitted a DHS-54E (medical needs form) wherein her doctor stated that she was disabled until October 11, 2011. (Department Hearing Summary).
3. The department gathered medical information and submitted such to the Medical Review Team (MRT) for a determination as to a deferral for the claimant. (Department Hearing Summary).
4. After an internist exam was requested and conducted, the department forwarded all the available medical information to the Medical Review

Team (MRT) for a determination as to the claimant's ability to participate in work related activities. (Department Hearing Summary).

5. On January 27, 2012, the MRT issued a determination that the claimant was not disabled, and was work ready with limitations. (Department Exhibit 26).
6. Based on the MRT assessment that the claimant was work ready with limitations, the department sent the claimant a work participation program appointment notice, scheduling the claimant to attend the WF/JET program on March 5, 2012. (Department Exhibit 8).
7. The claimant did not attend her scheduled appointment on March 5, 2012.
8. The department then sent the claimant a notice of noncompliance (DHS 2444) on March 12, 2012, scheduling a triage for March 20, 2012. (Department Exhibits 9-10).
9. The claimant and her authorized representative attend the triage and the department determined that the claimant did not have good cause for her noncompliance.
10. The claimant was sent a notice of case action (DHS 1605) on March 20, 2012, stating that her FIP benefits would be closing for a period of three months due to a first instance of noncompliance. (Department Exhibits 11-14).
11. On March 23, 2012, the claimant filed a request for hearing, protesting the closure of her FIP benefits.

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

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) 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. 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. 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. 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. JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth (DELEG) through the Michigan Works Agencies (MWAs). 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. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

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.

Department policy states:

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 work participation program or other employment service provider.

- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in required activity.
- 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.
- 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 pages 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. BEM 233A. Department policy defines good cause as follows:

GOOD CAUSE FOR NONCOMPLIANCE

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.

Good cause includes the following:

Employed 40 Hours

The person is working at least 40 hours per week on average and earning at least state minimum wage.

Client Unfit

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

Illness or Injury

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

Reasonable Accommodation

The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

No Child Care

The client requested child care services from DHS, the work participation program, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

- **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions.
- **Reasonable distance.** The total commuting time to and from work and the child care facility does not exceed three hours per day.
- **Suitable provider.** The provider meets applicable state and local standards. Also, unlicensed providers who are NOT registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

- **Affordable.** The child care is provided at the rate of payment or reimbursement offered by DHS.

No Transportation

The client requested transportation services from DHS, the work participation closure and reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

Long Commute

Total commuting time exceeds:

- Two hours per day, NOT including time to and from child care facilities

or

- Three hours per day, including time to and from child care facilities.

EFIP

EFIP unless noncompliance is job quit or voluntarily reducing hours of employment. BEM 233A pages 4-5.

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. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

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 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.

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, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period. 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.

If the department finds that the client has been noncompliant without good cause, the department must impose penalties. Department policy clearly states the penalties that must be imposed for noncompliance without good cause and for the action to be taken should the department determine that good cause has been established:

NONCOMPLIANCE PENALTIES FOR ACTIVE FIP INDIVIDUALS AND MEMBER ADDS

The penalty for noncompliance without good cause is FIP EDG closure. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.

- For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction.

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.

Good Cause Established

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.

Good Cause NOT Established

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.

In the case at hand, the Administrative Law Judge finds that the claimant was noncompliant with the WF/JET program by not attending as required on March 5, 2012.

At the hearing, the claimant's authorized representative (AR) stated that the claimant did not attend on the date in question because he advised the claimant not to attend. The claimant's AR further argued that the claimant should have been deferred from participating in the WF/JET program as a result of her disabilities. When a claimant contends that they are unable to participate in the WF/JET program due to a physical or mental disability, policy directs the department as follows:

Long-Term Incapacity

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 in Bridges. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. This may include those

who have applied for RSDI/SSI. Determination of a long term disability is a two step process. The client must fully cooperate with both steps.

Step One: Establishment of Disability

Once a client claims a disability he/she must provide DHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in the work participation program as a mandatory participant. See Verification Sources later in this item.

Step Two: Defining the Disability

For verified disabilities over 90 days, the specialist must obtain an MRT decision by completing the medical packet. 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. If the client does not provide the requested verifications, the case should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence.

Note: Deferral/participation reason in Bridges is *Incapacitated more than 90 days* while awaiting verification. Potentially disabled individuals are not sent to the work participation program while waiting for the verification of disability. A person with a condition or impairment that is pregnancy-related must be deferred for a problem pregnancy. These individuals should not be referred to the Medical Review Team (MRT) or to an SSI Advocate if the **only** conditions or impairments are due to pregnancy; see Pregnancy Complications in this item. When a person claims he/she is visually impaired, require the person to provide verification from an ophthalmologist or optometrist; a DHS-49-I, Eye Examination Report, may be used; see Visual Impairment in this item. Individuals with visual impairments should be referred to the Michigan Commission for the Blind (MCB), which offers vocational rehabilitation services. BEM 230A, page 10-11.

In this case, the claimant asserted that she was suffering from long term incapacity. The department gathered the appropriate medical documentation and referred the case to the MRT. The MRT determined that the claimant was work ready with limitations, and as such, the claimant was referred to the WF/JET program as a participant. The Administrative Law Judge finds that the department took the proper steps in assessing the claimant's alleged disability and followed the procedure outlined in the above-cited policy. Accordingly, the Administrative Law Judge finds that the claimant was properly referred to the WF/Jet program as a participant.

The claimant 's AR argued that the claimant meets the definition contained in MCL 400.57(f)(3)(c) which states:

(c) A recipient who has medical documentation of being disabled or medical documentation of an inability to participate in employment or the JET program for more than 90 days because of a mental or physical condition.

However, the issue as to the claimant's ability to participate in the JET program was decided by the MRT and the claimant was found to be work ready with limitations. This Administrative Law Judge will not address whether or not the MRT made the appropriate finding, rather the issue is what prevented the claimant from participating on the day in question. At the hearing, the claimant's AR presented additional medical documentation to show that the claimant's condition had worsened. However, the documentation does not show a worsening of the claimant's neck condition until May 2012, it does not show evidence of a shoulder tear until July 2012, and it does not show (as the claimant's AR reports) that the claimant's pulmonary function test (PFT) meets the listing level (under the Social Security Rules) until June 2012. Additionally, the claimant did not present any new medical evidence for the department to consider at the time of triage. Accordingly, the Administrative Law Judge determines that the claimant has not presented good cause for her noncompliance with the WF/JET program and that, in turn, the department acted properly in accordance with policy in terminating and sanctioning the claimant's FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly terminated and sanctioned the claimant's Family Independence Program (FIP) benefits for noncompliance with WF/JET requirements.

Accordingly, the department's actions are **AFFIRMED**. SO ORDERED.

/s/_____

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: September 11, 2012

Date Mailed: September 11, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

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