

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012498
Issue No: 1038
Case No: [REDACTED]
Hearing Date: October 26, 2011
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 September 21, 2011. After due notice, a telephone hearing was held on October 26, 2011. Claimant appeared and provided testimony.

ISSUE

Whether the Department of Human Services properly closed and sanctioned Claimant's Family Independence Program (FIP) benefits based on Claimant's 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. At all times relevant to this hearing, Claimant was a recipient of FIP benefits and, as a recipient of FIP benefits, Claimant was a mandatory WF/JET participant.
2. On July 19, 2011, the Department mailed Claimant a Jobs, Education and Training Appointment Notice (DHS 4785), advising Claimant of her required attendance at her WF appointment on August 1, 2011 at 9:00 a.m.. The Notice further advised that ongoing FIP recipients who do not cooperate with meeting self-sufficiency goals may have their cases closed. (Department Exhibit I)
3. On August 1, 2011, Claimant attended her JET orientation and, in doing so, signed a My Contract With Michigan Works! form, acknowledging her understanding that, as a mandatory WF/JET participant, she must check in with Michigan Works! on the assigned check-in day to turn in her

completed job search/readiness activity logs as assigned. Claimant further acknowledged her responsibility to immediately provide her career developer with documentation of any doctor's notes, court documents, etc., to excuse missing hours. (Department Exhibit 2, p. 5)

4. On August 1, 2011, Claimant also signed a Michigan Works Program and Orientation Rules and Expectations, acknowledging her understanding of her obligation to attend every day of JET orientation and that missing any portion of orientation, or being tardy for any portion of orientation will cause a participant to be marked as a "No-Show" for the entire period of orientation. (Department Exhibit 2, p. 6)
5. On August 3, 2011, Claimant did not attend her scheduled JET Financial Bootcamp workshop and did not provide her career developer with any documentation to excuse her absence. (Department Exhibit 2, p. 1)
6. On August 3, 2011, Claimant left a telephone message with her JET worker indicating that she had attempted to attend Michigan Works! but was unable to determine the time due to a power outage and also her vehicle ran out of gas on the way to the program. (Department Exhibit 3)
7. On August 4, 2011, Claimant contacted her JET career developer and asked whether her attendance was required at the Michigan Works! office on August 3, 2011. Claimant further advised her career developer that, because of a power outage, she had to stay in a hotel and left her JET folder at her mother's house. (Department Exhibit 2, p. 1)
8. On August 2, 2011, the Department mailed Claimant a Notice of Noncompliance (DHS 2444), advising her that she was in noncompliance for failing to participate as required in employment and/or self-sufficiency related activities. The Notice scheduled a triage appointment for Claimant on August 10, 2011 at 8:30 a.m. The Notice further advised Claimant that she had until August 12, 2011 to demonstrate good cause for her non-compliance. (Department Exhibit 4)
9. Claimant did not attend the August 10, 2011 triage appointment and did not submit any documentation by the August 12, 2011 deadline to demonstrate good cause for her non-compliance. (Department Exhibit 5)
10. On August 30, 2011, the department mailed Claimant a Notice of Case Action (DHS 1605) advising her that, effective October 1, 2011, her FIP case would be closed and sanctioned for a three-month period for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibit 7)

11. On September 21, 2011, Claimant requested a hearing, protesting the closure and sanction of her FIP case. (Request for a Hearing)

CONCLUSIONS OF LAW

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 of that decision. BAM 600. 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.

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 administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. Department policies for the program 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. 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. 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 Licensing and Regulatory Affairs (LARA) 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. 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 group to participate in the JET program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A. A spouse or parent who provides care for a spouse or child with disabilities living in the home is not a WEI and is not referred to the work participation program if: the spouse/child with disabilities lives with the spouse/parent providing care; and a doctor verifies the following: the spouse/child with disabilities requires a caretaker due to the extent of the disability; the spouse/parent is needed in the home to provide care; the spouse/parent cannot engage in an employment-related activity due to the extent of are required. BEM 230A.

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 of

applicants, recipients, or member adds means doing any of the following without good cause:

- . Failing or refusing to:
 - .. Appear and participate with the 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).
 - .. 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.
 - .. 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.

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.

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.

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. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for not less than 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 not less than 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A.

In this case, Claimant was required to participate in the Work First/JET program as a condition of receiving her FIP benefits. On August 2, 2011, the Department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant did not attend her WF orientation and did not provide any documentation deferring her from attending her orientation. And, because Claimant did not attend her triage appointment or otherwise

demonstrate good cause for her noncompliance, the department closed Claimant's FIP case and imposed a three-month sanction period effective October 1, 2011.

At the hearing, Claimant testified that she did try to attend the WF orientation on August 3, 2011 but that her instructor closed the class before 11 a.m., precluding her from entering the class. Claimant further acknowledged however that she contacted her JET career developer on August 4, 2011 to explain her nonattendance on August 3, 2011 and had asked whether her attendance was required at the Michigan Works! office on August 3, 2011. Claimant further testified that she had a court date that also conflicted with her attendance – however, Claimant ultimately acknowledged that this court date was for August 6, 2011 and not August 3, 2011. Finally, Claimant testified that she did not receive the Notice of Noncompliance and was therefore unaware of her triage appointment. However, the department did not have any information in Claimant's file indicating that the Notice of Noncompliance, mailed to Claimant's current address on file, was returned as undeliverable. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

The Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to credibly show good cause for her failure to participate as required in employment and/or self-sufficiency related activities and the Department properly closed and sanctioned 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 and sanctioned Claimant's FIP benefits case due to Claimant's non-compliance with WF/JET requirements. The Department's actions are **AFFIRMED**.

It is SO ORDERED.

/s/
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 27, 2011

Date Mailed: October 28, 2011

NOTICE: The 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 Hearing Decision and Order. MAHS will not order a rehearing or

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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 this Hearing 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.

SDS/cr

cc:

