

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-51248
Issue No: 1038
Case No: [REDACTED]
Hearing Date: June 13, 2012
County: Washtenaw

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 request for a hearing received on May 7, 2012. After due notice, a telephone hearing was held on June 13, 2012. Participants on behalf of Claimant included [REDACTED] (Translator/Representative) from Jewish Family Services and [REDACTED] (Claimant's daughter). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Case Manager) and [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. Claimant was a mandatory WF/JET participant.
2. On February 1, 2012, the Department restored Claimant's FIP benefits after the Department erroneously closed Claimant's case for failure to timely return a Family Automated Screening Tool (FAST) survey. Apparently, the Department considered the February 1, 2012 closure an error because Claimant previously returned a FAST survey on May 19, 2011.
3. On February 3, 2012, the Department mailed Claimant a second FAST Mandatory Notice (DHS-1536). The DHS-1536 instructed Claimant to complete a second FAST survey within 30 days and also to complete a Family Self-Sufficient Plan (FSSP) within 90 days. The notice also

provides that failure to return either the FAST or the FSSP may result in the closure or denial of benefits.

4. The FAST survey was due to be returned to the Department no later than March 4, 2012.
5. Claimant failed to complete and return the FAST survey by March 4, 2012.
6. On April 11, 2012, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to complete a FAST survey. Claimant's Triage appointment was scheduled for April 17, 2012 at 10:00a.m. The deadline for Claimant to show good cause was April 23, 2012. The notice indicated that failure to show good cause could result in loss of benefits.
7. On April 17, 2012, Claimant attended Triage and stated that she had good cause based on her May 19, 2011 FAST survey. The Department indicated that the May 19, 2011 was not acceptable and found Claimant did not show good cause for her noncompliance.
8. The Department mailed Claimant a Notice of Case Action (DHS-1605) on April 26, 2012, closing Claimant's FIP benefits for 3 (three) months effective June 1, 2012, due to her failure to participate in employment and/or self-sufficiency related activities. According to the Department, this is Claimant's first noncompliance with the JET program.
9. Claimant submitted a hearing request on May 7, 2012, protesting the closure of her FIP benefits.

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 (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. 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 referral¹; (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.²

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

¹ 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.

² 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.

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.

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.

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.

The work participation program is administered by the Workforce Development Agency, State of Michigan (WDASOM) through the Michigan one-stop service centers. The work participation program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. BEM 230A.

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. 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.

Modifications or extra help may include, but are not limited to, the following: (1) reduced hours of required participation; (2) extended education allowances including more than 12 months allowed for vocational education; or (3) extended job search/job readiness time limit. 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. An 18 year old **adult** group member is considered a WEI and must attend the work participation program, regardless of school attendance. 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.

Applicants and members added to the cash assistance group who are working a minimum of 40 hours per week at the state minimum wage are not referred to the work participation program. This client's participation in employment is meeting requirements. 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.³ 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

³ 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.

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 add is pending, close the FIP EDG for the minimum number of penalty months. 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. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A.

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. BEM 233A. Effective October 1, 2011, the following minimum penalties apply: (1) for the individual’s first occurrence of noncompliance, FIP closure is for not less than three calendar months; (2) for the individual’s second occurrence of noncompliance, FIP closure is for not less than six calendar months; (3) for the individual’s third occurrence of noncompliance, FIP closure is a lifetime sanction. BEM 233A. 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. BEM 233A.

Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A.

The sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

In this matter, the Department closed Claimant's FIP case because she failed to return the second FAST survey. There is no dispute that Claimant failed to return the FAST survey. However, during the hearing, the Administrative Law Judge learned that Claimant is originally from Somalia and that she has trouble understanding English. Claimant did not indicate this information on her assistance application. The Department representative stated that Claimant's May 19, 2011 FAST survey was insufficient and that is why the subsequent FAST survey was sent. Claimant's representative stated that Claimant, due to a language barrier, was not aware that she must return the second FAST survey. This Administrative Law Judge believes that Claimant should have returned the February 3, 2012 FAST survey despite the fact that she previously returned the May, 2011 FAST survey. The Department has shown that Claimant was duly mailed a copy of the FAST notice. Claimant attended the Triage and has previously returned documents and verifications to the Department. Under this circumstance, Claimant could have, and should have, returned the FAST survey.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause for not returning the FAST survey. As a result, the Department properly closed 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 Claimant's FIP case for noncompliance with WF/JET requirements and the 3 (three) month sanction is AFFIRMED.

It is SO ORDERED.

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

Date Signed:6/20/12

Date Mailed:6/20/12

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
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/ds

