

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20125410
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: November 17, 2011
Wayne County DHS (55)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on November 17, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits due to Claimant's alleged noncompliance with Jobs, Education and Training (JET) participation.

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 an ongoing FIP benefit recipient.
2. Claimant was an ongoing JET participant.
3. Claimant was allegedly noncompliant with JET participation due to a failure to attend JET.
4. On 9/27/11, a triage was held in which it was determined that Claimant would report for JET participation on 10/3/11
5. Claimant failed to return to JET on 10/3/11.

6. Claimant alleged that she is unable to attend JET due to an inability find affordable day care for her seven month old child.
7. On 10/5/11, DHS initiated termination of Claimant's FIP benefits due to Claimant's alleged noncompliance with JET participation.
8. On 10/12/11, Claimant requested a hearing to dispute the termination of FIP benefits.

CONCLUSIONS OF LAW

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.* DHS administers the FIP pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The controlling DHS regulations are those that were in effect as of 9/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A at 1. Federal and state laws require each work eligible individual (WEI) in a FIP group to participate in Jobs, Education and Training (JET) Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. *Id.* These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth through the Michigan Works! Agencies. *Id.* 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. *Id.*

The WEI is considered non-compliant for failing or refusing to appear and participate with JET or other employment service provider. *Id.* at 2. Note that DHS regulations do not objectively define, "failure or refusing to appear and participate with JET". Thus, it is left to interpretation how many hours of JET absence constitute a failure to participate.

DHS regulations provide some guidance on this issue elsewhere in their policy. A client's participation in an unpaid work activity may be interrupted by occasional illness

or unavoidable event. BEM 230 at 22. A WEI's absence may be excused up to 16 hours in a month but no more than 80 hours in a 12-month period. *Id.*

In the present case, DHS testified that Claimant began her JET participation on 8/17/11 and stopped JET participation shortly thereafter. Claimant did not refute the DHS testimony. It is found that DHS established a basis for noncompliance.

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. *Id.* at 7. In processing a FIP closure, DHS is required to send the client a notice of non-compliance (DHS-2444) which must include: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration *Id.* at 8. In addition, a triage must be held within the negative action period. *Id.* If good cause is asserted, a decision concerning good cause is made during the triage and prior to the negative action effective date. *Id.*

DHS held a 9/27/11 triage after Claimant stopped participating with JET in 8/2011. At the triage, Claimant was sent to return to JET beginning 10/3/11. It was not explicitly stated in the hearing, but it is believed that the basis for noncompliance was Claimant's failure to continue JET participation in 8/2011. It can be reasonably presumed that when Claimant was sent back for JET participation on 10/3/11, the failure by Claimant to do so was part of an opportunity to continue her FIP benefits without disqualification (see BEM 233A) and not a separate basis for noncompliance. This presumption is crucial because DHS may not use Claimant's failure to return to JET as a separate basis for noncompliance as no triage occurred following the alleged 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. *Id.* at 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.* at 4. A claim of good cause must be verified. *Id.* at 3.

It was not disputed that DHS approved Claimant for Child Development and Care (CDC) benefits prior to the time Claimant was to begin her JET participation. Claimant contended that she may have had been eligible for CDC benefits but she was unable to find an affordable CDC provider. If Claimant's testimony was accepted as reasonable, Claimant would have a basis for good cause to negate the alleged noncompliance.

Claimant credibly testified that she initially utilized a CDC provider who accepted CDC benefit payments but that her out-of-pocket costs made the CDC unaffordable. It should

20125410/CG


be noted that CDC payments are capped and a CDC provider may charge an amount beyond maximum CDC payment levels.

Overall, Claimant's testimony concerning the difficulty in locating an affordable day care provider was not credible. Consideration was given to Claimant's location, lack of transportation and child's age. However, there simply is no known reason to believe that these considerations prevented Claimant from finding a reasonably priced and located CDC provider.

Claimant testified that she was not given enough time to find a suitable provide. Claimant's testimony was greatly hampered by her inability to find an affordable CDC provider by the administrative hearing date. Three months would be a very reasonable amount of time to find an acceptable and affordable CDC provider. Based on the presented evidence, Claimant's claim of good cause is rejected. Accordingly, it is found that DHS properly found Claimant to be noncompliant with JET participation. As DHS terminated Claimant's FIP benefits on the basis of noncompliance with JET participation, it is also found that DHS properly terminated the FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefits effective 11/2011 based on noncompliance with JET participation. The actions taken by DHS are AFFIRMED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 11/23/11

Date Mailed: 11/23/11

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)

20125410/CG

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

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cc:

