

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-24585
Issue No: 1038
Case No: [REDACTED]
Hearing Date: February 9, 2012
County: Kalamazoo

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 December 27, 2011. After due notice, a telephone hearing was held on February 9, 2012. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] (DHS Case Manager) and [REDACTED] (JET/Michigan Works Case 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 with no identified employment barriers.
2. On October 17, 2011, Claimant, as part of her participation in the WF/JET program, agreed to report 40 hours of job search activities per week. Claimant agreed to email the job search logs weekly and she understood that failure to comply may result in the sanction of her FIP benefits.
3. During the week of October 30, 2011, Claimant failed to submit her required 40 hours of job search activity logs.

4. During the week of November 6, 2011, Claimant failed to submit her required 40 hours of job search activity logs.
5. During the week of November 13, 2011, Claimant failed to submit her required 40 hours of job search activity logs.
6. On November 28, 2011, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for December 13, 2011 at 1:00 p.m. The deadline for Claimant to show good cause was December 8, 2011. The notice indicated that failure to show good cause could result in loss of benefits.
7. On December 5, 2011, Claimant called and requested that her triage be rescheduled.
8. On December 16, 2011, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was rescheduled for December 20, 2011 at 1:00 p.m. The deadline for Claimant to show good cause was December 16, 2011. The notice indicated that failure to show good cause could result in loss of benefits.
9. On December 20, 2011, Claimant did not attend Triage because she had an emergency appointment for her child. Claimant did not call and indicate that she would not be attending triage. The Department found Claimant did not show good cause for her noncompliance.
10. The Department mailed Claimant a Notice of Case Action (DHS-1605) on December 21, 2011, closing Claimant's FIP benefits for 3 months due to her failure to participate in employment and/or self-sufficiency related activities.
11. Claimant submitted a hearing request on December 27, 2011, protesting the closure of her FIP and FAP benefits. However, there was no Department action affecting her FAP benefits.
12. This is Claimant's first non-compliance with the WF/JET program.¹

¹ Although both Notices of Noncompliance (DHS-2444) indicate that this was Claimant's second noncompliance with the WF/JET program, the Department did not provide any evidence at the hearing of a previous noncompliance. Further, the Notice of Case Action (DHS-1605) in this case indicates that Claimant's sanction was for a period of 3 months from February 1, 2012 through April 30, 2012.

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.

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. 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.

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.

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 FSSP process; (3) develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the Family Self-Sufficiency Plan (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. BEM 233A.

Noncompliance also can be found if an applicant, recipient or a member add, without good cause, does any of the following: (1) states orally or in writing a definite intent not to comply with program requirements; (2) threatens, physically abuses or otherwise behaves disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity; or (3) refuses 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. 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. Effective April 1, 2007, the following minimum penalties apply: (1) 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; (2) for the second occurrence on the FIP case, close the FIP for not less than 3 calendar months; (3) 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.

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.

In this matter, the Department provided documentation which indicated that Claimant was required to report 40 hours of job search activities per week. The document, entitled, "JET Participation Plan" was signed by Claimant on October 17, 2011. During the hearing, Claimant does not challenge the Department's contention that she failed to email, send or otherwise provide the WF/JET office with verification of 40 hours of job search activity for the weeks of October 30, November 6 and November 13. Instead,

Claimant argued that her required WF/JET participation activity was unclear. She also claims that one or more members of the WF/JET/Michigan Works office advised her that she was not required to submit the job search activities regardless of the October 17, 2011 agreement. Other than the October 17, 2011 document, Claimant did not provide a document that reflected any agreement regarding her WF/JET participation requirements. This Administrative Law Judge does not find Claimant's arguments persuasive.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge believes that Claimant's WF/JET requirements were as set forth in the October 17, 2011 agreement. To the extent there was any other agreement concerning Claimant's required WF/JET participation, the Department would have reduced it to a document. The fact that no additional documents exist concerning Claimant's required participation is dispositive.

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 failing to submit her required job search activities. 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: 2/15/12

Date Mailed: 2/15/12

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

■ [REDACTED]