

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-6454
Issue No: 1038
Case No: [REDACTED]
Hearing Date: December 8, 2011
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 September 19, 2011. After due notice, a telephone hearing was held on December 8, 2011. Participants on behalf of Claimant included [REDACTED] (Claimant's husband). Participants on behalf of Department of Human Services (Department) included Nathaniel Dorris, Family Independence Specialist, [REDACTED], JET Program Coordinator and [REDACTED], JET Supervisor.

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 January 9, 2011, Claimant gave birth to a child and the Department provided Claimant with a 3 (three) month deferral from WF/JET program.
3. On April 29, 2011, the Department mailed Claimant a JET Appointment Notice (DHS-4785) which scheduled Claimant for an appointment on May 9, 2011 for 9:00am at Michigan Works (MWA). (Department Exhibit 2).
4. On May 5, 2011, Claimant's family doctor [REDACTED] faxed a letter to the Department which indicated, "Despite the use of several different bottles, [Claimant's child] has not demonstrated adequate formula intake, so I recommend that [REDACTED] continue with breast feeding to

assure adequate nutrient intake and weight gain for several more months. We will reevaluate progress at her next appointment.” (Department Exhibit 5).

5. The local MWA office does not permit WF/JET participants to bring their children on the premises.
6. Claimant failed to attend JET appointment on May 9, 2011.
7. On August 5, 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 on May 9, 2011. The Department informed Claimant that she was scheduled for a Triage appointment on August 12, 2011 at 2:15p.m., to demonstrate good cause for noncompliance. The deadline for Claimant to show good cause was August 15, 2011. (Department Exhibit 4).
8. On August 12, 2011, Claimant attended Triage and presented a second copy of [REDACTED] May 2, 2011 letter indicating that her child will not take from a bottle and must be breast fed.
9. The Department found that Claimant did not show good cause because (1) the doctor’s note did not say Claimant could not work and (2) the local Michigan Works office ensured that a private room would be available for Claimant to express her breast milk.
10. On August 16, 2011, the Department mailed Claimant a First Noncompliance Letter (DHS-754) which permitted Claimant to re-engage with MWA on August 22, 2011. (Department Exhibit 6).
11. The Department mailed Claimant a JET Appointment Notice (DHS-4785) on August 16, 2011, which scheduled Claimant for JET on August 22, 2011 at 8:50am. (Department Exhibit 7).
12. On August 16, 2011, Dr. Cooke (Claimant’s physician) signed a Medical Needs – JET form (DHS-54-E) that indicated the following regarding Claimant: (1) child had “inability to bottle feed - so mother needed for breastfeeding child at home”; (2) “cannot work until December 16, 2011”; (3) “has no physical limitations”; (4) needed to be in the home to provide care; (5) cannot engage in work (due to extent of care required) and “child does not tolerate bottle feeding so mother needed to provide breastfeeding at home.” (DHS-54-E).
13. On August 22, 2011, Claimant, accompanied by her child, presented to the MWA office to attend orientation but she was sent home based on the no-children policy.
14. On September 12, 2011, the Department mailed Claimant a Notice of Case Action (DHS-1605) closing Claimant’s FIP benefits for 3 (three)

months effective September 1, 2011 through November 30, 2011, due to her failure to participate in employment and/or self-sufficiency related activities. (Department Exhibits 9-10).

15. Claimant submitted a hearing request on September 19, 2011, protesting the closure of her FIP benefits. (Request for Hearing)
16. No evidence was presented to show that Claimant had any previous violations of the WF/JET program.
17. On December 12, 2011, the Department agreed to the following: (1) withdraw the proposed sanction from September, 2011; (2) approve a temporary deferral through December 16, 2011 (based on the DHS-54-E); and (3) re-evaluate the case effective December 19, 2011.

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

- . Failing or refusing to:
 - .. Appear and participate with the Jobs, Education and Training (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. 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.

Per department policy, good cause includes, but is not limited to, the following:

- . The person is working at least 40 hours per week on average and earning at least state minimum wage.
- . 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. BEM 233A.
- . The client has a debilitating illness or injury, or an immediate family member’s illness or injury requires in-home care by the client. BEM 233A.
- . 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. BEM 233A, pp. 3-4.

- . The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site. BEM 233A.
- . The care is appropriate to the child's age, disabilities and other conditions. BEM 233A.
- . The total commuting time to and from work and child care facilities does not exceed three hours per day. BEM 233A.
- . The provider meets applicable state and local standards. Also, providers (e.g., relatives) who are NOT registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. See PEM 704.
- . The child care is provided at the rate of payment or reimbursement offered by DHS. BEM 233A.
- . The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. BEM 233A.
- . The employment involves illegal activities. BEM 233A.
- . The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc. BEM 233A, p. 4.
- . 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. BEM 233A.
- . The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit. BEM 233A.
- . The client has a long commute where the 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. BEM 233A, pp.4-5.

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.

This Administrative Law Judge finds that Claimant has shown good cause for her failure to attend the JET appointments on May 9, 2011 and on August 22, 2011. Claimant has shown that she had a valid reason for failure to attend the JET appointment on May 9, 2011 and/or August 22, 2011 based on factors that were beyond her control. It is undisputed that Claimant presented the Department with a letter from a physician that clearly indicated that her child could not be bottle-fed and was reduced to breast feeding. She also presented the Department with a DHS-54-E. Either document alone demonstrates good cause.

Clearly Dr. Cooke, in his letter, points out that Claimant's child has poor formula intake by bottle and that several different bottles have been used without success. This letter is unambiguous. Nowhere in his letter does [REDACTED] indicate that Claimant's child may take breast milk from a bottle; rather, he denotes that the child must continue with "breast feeding." During the hearing, the Department argued that a child who consumes breast milk from a bottle is "breast feeding." However, in the English language the term "breast feeding" has an unambiguous definition. Breast feeding is a verb which means "to feed a baby from a mother's breast." See Merriam-Webster Dictionary Online (2011). See <http://www.merriam-webster.com/dictionary/breast%20feed>. At best, the Department's interpretation of Dr. Cooke's letter is overly narrow. At worst, Dr. Cooke's letter was simply ignored. Either way, this Administrative Law Judge finds that the only reasonable interpretation of Dr. Cooke's letter is that Claimant's child must be fed directly from Claimant's breast rather than from a bottle. Any other interpretation is unreasonable.

During the hearing, the Department indicated that policy prohibited Claimant from bringing her child to the MWA. The Department provided Claimant with an accommodation by allowing her to enter a private room at MWA to pump her breast milk so that her child can later be bottle fed. However, ██████████ clearly indicated that Claimant's child will not take from bottle. As far as Claimant is concerned, this is not an accommodation at all because Claimant's child will not take from a bottle. Thus, Claimant cannot breast feed her child at MWA and, according to the Department, she would not be excused from attending JET. The result is that the Department constructively removed Claimant from the program and wrongfully sanctioned her for failure to attend JET because her child required breast feeding.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has shown good cause for her failure to attend JET activities. As a result, the Department did not properly closed Claimant's FIP case for 3 (three) months.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department DID NOT properly close Claimant's FIP case for noncompliance with WF/JET requirements and the 3 (three) month sanction is REVERSED.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

- Reinstatement Claimant's FIP benefits back to the date of closure.
- Remove from Bridges any sanctions that may have been levied pertaining to Claimant regarding the May, 2011 and August, 2011 JET appointment activity.
- Provide Claimant with a temporary deferral through December 16, 2011 and then obtain clearance from the treating physician before requiring any future JET attendance.
- Re-evaluate Claimant's case effective January 3, 2011.
- Issue any retroactive benefits that Claimant is entitled to receive.

It is SO ORDERED.

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

Date Signed: 12/16/11

Date Mailed: 12/16/11

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.

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

