

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2012-7057
Issue No. 1038 3029
Case No. [REDACTED]
Load No. December 7, 2011
Oakland County DHS (04)

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 December 7, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The first 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.

The second issue is, if the noncompliance is established, whether DHS properly reduced Claimant's Food Assistance Program (FAP) benefits.

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 and her spouse were ongoing FIP and FAP benefit recipients.
2. Claimant and her spouse were ongoing JET participants.
3. On 6/10/11, Claimant and her spouse reported to JET that they were both offered employment.

4. Claimant and her spouse never began the alleged employment and never reported this information to DHS or JET.
5. JET made several unsuccessful attempts to contact Claimant and her spouse regarding the details of the employment.
6. On 8/24/11, DHS mailed Claimant a Notice of Noncompliance scheduling Claimant and her spouse for a triage to discuss Claimant's failure to report details of the reported employment.
7. On 9/13/11, a triage was held though neither Claimant nor her spouse attended.
8. DHS determined Claimant and her spouse lacked good cause for the failure to report employment income information.
9. On 9/24/11, initiated termination of FIP benefits and a reduction in FAP benefits effective 11/2011 based on alleged noncompliance due to Claimant's and her spouse's failure to report employment information.
10. On 10/14/11, Claimant requested a hearing to dispute the FIP benefit termination and FAP benefit reduction.

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 11/2011, 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.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.
- Failing or refusing to appear and participate with JET or other employment service provider.
- Failing or refusing to complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
- Failing or refusing to develop a Family Self-Sufficiency Plan (FSSP).
- Failing or refusing to comply with activities assigned on the FSSP.
- Failing or refusing to provide legitimate documentation of work participation.
- Failing or refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing or refusing to participate in employment and/or self-sufficiency-related activities.
- Failing or refusing to accept a job referral.
- Failing or refusing to complete a job application.
- Failing or refusing to 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. *Id.*

It was not disputed that Claimant and her spouse reported to JET on 6/10/11 that they both were starting employment. It was also not disputed that both stopped attending JET after reporting this information. Neither Claimant nor her spouse reported any of the details of the employment to JET, such as the employer, hourly wage or hours per week. JET made several attempts via telephone to contact Claimant and her spouse regarding the employment details but were never able to reach Claimant. As it turned out, neither Claimant nor her spouse began the reported employment.

Failing to report and/or verify employment information is a basis for noncompliance. It is found that DHS established a basis for noncompliance with JET participation.

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.

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*.

Claimant stated that she and her spouse were evicted in 5/2011 and were temporarily homeless in early 6/ 2011 when they were able to move in with family members. Claimant implied that she had good cause for the failure to report employment information because of the homelessness. She also testified that she was unable to report the information because she had no means to call JET.

Claimant's contentions were not persuasive. The period of homelessness (early 6/2011) was only a brief period and occurred prior to reporting the employment to DHS. Homelessness could not have been an obstacle to reporting employment information if the issue was already resolved by the time Claimant reported new employment.

It is equally unpersuasive that Claimant had no ability to contact JET while she lived with family. It is highly unlikely that family members would allow Claimant, her spouse and children to live with them but to not use the telephone to update employment information. It is found that Claimant failed to establish good cause for the noncompliance.

DHS established following all required procedures in processing the FIP benefit termination. It is found that DHS properly terminated FIP benefits effective 11/2011.

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001- 3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the

Reference Tables Manual (RTM). Updates to DHS regulations are found in the Bridge s Policy Bulletin (BPB).

DHS is to disqualify a FAP group member for noncompliance when all the following exist:

- the client was active both FIP and FAP on the date of the FIP noncompliance;
- the client did not comply with FIP employment requirements;
- the client is subject to a penalty on the FIP program;
- the client is not deferred from FAP work requirements; and
- the client did not have good cause for the noncompliance. BEM 233B at 2.

Clients meeting one of the criteria below are temporarily deferred from FAP employment-related activities:

- Age: Defer a person who is under age 16 or at least age 60, a 16- or 17-year old who is not the grantee or a grantee age 16 or 17 in special circumstances.
- Care of a Child: Defer one person who personally provides care for a child under age six who is in the FAP group.
- Care of Disabled Household Member: Defer one person who personally provides care for a disabled member of his/her own FAP group.
- Disability: Defer persons incapacitated due to injury, physical illness or mental illness.
- Education: A student enrolled up to half time in any recognized school, training program or institution of higher education meets the employment-related activities requirement. This includes persons attending school for GED or adult high school completion.
- Employment: Persons employed, self-employed or in work study an average of 30 hours or more per week over the benefit period or earning on average the federal minimum wage times 30 hours per week are not required to participate in any further employment-related activities. This includes migrant or seasonal farm workers with an employer or crew chief contract/agreement to begin work within 30 days.
- Pregnancy: Defer pregnant women, beginning the seventh month of pregnancy or earlier if a pregnancy complication is medically documented.
- SSI-FAP Applicant: Defer applicants who apply for both SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time.
- Substance Abuse Treatment Center Participant: Defer active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation. This does not include AA or NA group meetings. To verify use a verbal or written statement from the center.
- Unemployment Compensation (UC) Applicant or Recipient: Defer an applicant for or recipient of unemployment benefits. This includes a person whose unemployment benefits application denial is being appealed. BEM 230B at 3-5

There was no dispute that the FAP benefit reduction was solely based on Claimant's noncompliance with JET participation. It was already found that DHS properly found Claimant and her spouse noncompliant with JET participation. As a result, DHS determined FAP benefit eligibility after disqualifying Claimant and her spouse from the determination.

There was evidence that Claimant and her spouse were the parents of a child under six. DHS had a basis to impose a disqualification on one parent, but not two. Either Claimant or her spouse should have been deferred from FAP disqualification for being a caretaker of a child under six years and accordingly, not disqualified in the FAP benefit determination. It is found that DHS erred in reducing FAP benefits by failing to consider a basis for deferral for Claimant or her spouse as a caretaker of a child under six years.

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 PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to consider a basis for deferral for Claimant or her spouse as caretakers of a child under six. It is ordered that DHS:

- (1) redetermine FAP benefits effective 11/2011 based on a deferral for Claimant or her spouse as caretakers of a child under six years old; and
- (2) supplement Claimant for any FAP benefits not received as a result of the DHS error.

The actions taken by DHS are PARTIALLY REVERSED.



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

Date Signed: December 15, 2011

Date Mailed: December 15, 2011

2012-7057/CG

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

CG/ctl

cc:

[REDACTED]

Oakland County DHS (04)/1843

[REDACTED]

C. Gardocki
File