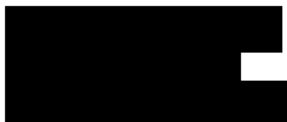


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012999
Issue No.: 1038
Case No.: [REDACTED]
Load No.: October 27, 2011
Hearing Date: Wayne County DHS (19)

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 October 27, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], [REDACTED], Manager, and [REDACTED], Triage Coordinator, 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 had a 20 hour per week obligation to attend JET.
4. Until 6/2011, Claimant satisfied his weekly JET participation by attending school.
5. Following Claimant's graduation in early 6/2011, Claimant was expected to meet JET participation by verifying 20 hours per week of job search activity.

6. Claimant provided minimal job search activity in early 6/2011 and stopped providing job search verifications by the end of 6/2011.
7. On an unspecified date, Claimant was found noncompliant with JET participation due to Claimant's ongoing failure to verify 20 weekly hours of job search.
8. On 9/14/11, a triage was scheduled to discuss Claimant's failure to verify job search activities.
9. Claimant did not attend the triage.
10. On 9/14/11, DHS initiated termination of Claimant's FIP benefits based on Claimant's noncompliance with employment-related activities (i.e. failure to participate with JET).
11. On 9/21/11, Claimant requested a hearing to dispute the FIP benefit termination.

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 (MWA). *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. *Id.* 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.* at 1-2.

MWAs offer various ways that clients can meet their weekly participation requirements. Some of the allowable methods in meeting participation include: attending school or other trainings, on-site MWA attendance or independent job search. Claimant was allowed to meet his JET requirements by attending school. Upon Claimant's graduation from school on 6/8/11, Claimant was expected to meet his JET participation by verifying the equivalent of 20 hours of job search.

When DHS was asked what Claimant's noncompliance with JET participation was, DHS representatives testified that Claimant failed to verify job search activities since 6/2011. The DHS response was based on notes made by MWA representatives; the statements were hearsay. It is worth noting that DHS chose to not enlist the appearance of any MWA representatives for the administrative hearing. Thus, no first-hand information concerning Claimant's alleged noncompliance was provided. Though the testimony was allowed, it was given only minimal credibility due to its hearsay nature; Claimant would be given an opportunity to rebut the testimony.

Claimant essentially acknowledged that he was less than diligent in verifying his job search activities. DHS asserted that Claimant submitted documentation which listed two employers one week in 6/2011 and that Claimant stopped submitting verifications for his job search thereafter. Claimant did not specifically refute any of DHS' allegations. Though the DHS allegations regarding noncompliance were based on second-hand documentation and somewhat vague in presentation, Claimant's acknowledgement of the noncompliance removes the concerns of the evidence. It is found that Claimant failed to verify job search activities for several weeks beginning in early 6/2011. Claimant's failure is a sufficient basis for 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.

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 testified that he regularly went to his school to perform job search activities, though acknowledged not verifying his activities with JET. Claimant's failure to verify the job search is a basis for noncompliance. Claimant knew of his obligation to verify job search activities based on evidence which demonstrated Claimant made allegedly incomplete job search verification submissions in 6/2011. Claimant also failed to provide any evidence of job search activities during the administrative hearing.

More to the issue of good cause, Claimant alleged that he has a three-year-old child and had difficulty in raising his child while meeting his JET requirements. Claimant's assertion could be good cause if it is found that lack of child care caused the lack of participation.

Claimant has two problems in establishing that a lack of child care contributed to the noncompliance. First, it was established that Claimant applied for Child Development and Care (CDC) assistance from DHS in 2010 while he attended school. Claimant responded that he did not realize that CDC could also be utilized for job search activities

through JET participation. Claimant's response was not outlandish but it would seem reasonable that Claimant should have inquired about the possibility of using CDC if child care was an obstacle.

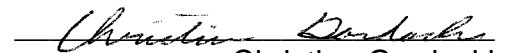
Secondly, Claimant's job search activities required no MWA attendance. It would seem reasonable that Claimant could have supervised his child while completing the equivalent of 20 hours of jobs search activities whether those activities involved applying for employment online or going to local employers. Had MWA demanded Claimant's in-person presence at the worksite, Claimant's lack of child care would have been a more compelling excuse for noncompliance. It is found that Claimant failed to establish good cause for his lack of JET participation.

DHS established all necessary procedures were followed in determining noncompliance with JET participation. It is found that DHS properly determined Claimant to be noncompliant with JET participation.

Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. It is found that DHS properly terminated Claimant's FIP benefits based on Claimant's noncompliance with JET participation.

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 10/2011 based on noncompliance with employment-related activities. The actions taken by DHS are AFFIRMED.


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

Date Signed: October 31, 2011

Date Mailed: October 31, 2011

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).

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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 to:

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

CG/hw

cc:

