

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-10179
Issue No: 1038
Case No: [REDACTED]
Hearing Date: December 8, 2011
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 October 24, 2011. After due notice, a telephone hearing was held on December 8, 2011. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] Family Independence Manager.

ISSUE

Whether the department properly terminated and sanctioned Claimant's Food Assistance Program (FAP) and 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 June 17, 2011, Claimant's family practice physician, Mark Peterson, D.O., signed a letter requesting that Claimant be excused from the JET program due to nausea and vomiting during pregnancy, until she can be reassessed on July 31, 2011. (Department Exhibit 1).
3. The Department placed Claimant on a medical deferral status until July 31, 2011.

4. On August 6, 2011, the Department sent Claimant a JET Appointment Notice (DHS-4785) which scheduled Claimant's appointment for August 15, 2011 at 12:45pm. (Department Exhibit 2).
5. On August 15, 2011, Claimant called her caseworker and left a voicemail message indicating that she was not required to attend JET because she had a doctor's note on file. (Department Exhibit 3).
6. Claimant's caseworker returned Claimant's voicemail message on August 15, 2011 and advised Claimant that her doctor's note expired on July 31, 2011 and that she must bring new documentation to continue the medical deferral or she will be required to attend JET. (Department Exhibit 3).
7. Claimant did not attend JET during the time period of August 15, 2011 through August 27, 2011.
8. On September 27, 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. The Department informed Claimant that she was scheduled for a Triage appointment on September 9, 2011 at 1:00 p.m., to demonstrate good cause for noncompliance. The deadline for Claimant to show good cause was September 12, 2011. The notice indicated that failure to show good cause could result in loss of benefits. (Department Exhibit 5).
9. On September 9, 2011, Claimant did not attend Triage. (Department Exhibit 7).
10. The Department found Claimant did not show good cause for her noncompliance.
11. The Department mailed Claimant a Notice of Case Action (DHS-1605) on September 21, 2011, closing Claimant's FAP and FIP benefits for 3 months effective November 1, 2011 for failure to participate in employment and/or self-sufficiency related activities. (Department Exhibit 8).
12. Claimant submitted a hearing request on October 24, 2011, protesting the closure of her FIP benefits. (Request for Hearing).
13. Claimant gave birth to her child on October 25, 2011.
14. This is Claimant's first non-compliance with the FIP program.

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 Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) 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). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The department's stated goal of the Food Assistance Program (FAP) is "to ensure sound nutrition among children and adults." BEM 233B. In addition, the goal of the department's employment-related policies for FAP households is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training. BEM 233B.

Policy provides that non-deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. BEM 233B. However, unlike cash benefits, which are tied to participation in the Jobs, Education and Training (JET) program, there are no hourly work participation requirements for the Food Assistance Program. BEM 233B. In order to receive FAP benefits, non-deferred adults must comply with the following work requirements:

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.

The Department will defer persons incapacitated due to injury, physical illness or mental illness. BEM 233B. A reason for deferral will be verified only if it is not obvious and the information provided is questionable (unclear, inconsistent or incomplete). Sources that may be used to verify questionable information are:

- SSI/RSDI/MA approval or receipt based on disability or blindness. For SSI and RSDI, use one of the sources referenced in FIP policy, Care of Disabled Spouse or Disabled Child in BEM 230A.
- An evaluation signed by a fully licensed psychologist that the client has an IQ of 59 or less.
- **Statement from an MD/DO that the person is unable to work. Any medical evidence submitted by a Physician's Assistant must be cosigned by an MD/DO.**
- The DHS-54A, Medical Needs; DHS-49, Medical Examination Report; DHS-49-D, Psychiatric/Psychological Examination Report; or another written statement is acceptable. BEM 233B.

Pregnant women, beginning the seventh month of pregnancy or earlier if a pregnancy complication is medically documented, will be deferred. BEM 233B. Confirmation by an MD, DO, certified nurse-midwife, ob-gyn nurse practitioner or ob-gyn clinical nurse specialist which must include an expected date of delivery. BEM 233B. The DHS-49, Medical Examination Report; DHS-54A, Medical Needs; or another written statement is acceptable. BEM 233B.

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.

This Administrative Law Judge finds that the Department properly closed Claimant's FIP and FAP case due to failure to comply with JET program activities. Claimant's medical deferral due to pregnancy complications indicated that her deferral was temporary. Claimant's treating physician indicated in his medical note that Claimant's excuse from JET was temporary "until patient can be reassessed on July 31, 2011." Claimant did not provide any additional documentation to show that she had been reassessed and that the conditions giving rise to her previous deferral continue to exist. Claimant also did not provide confirmation by an MD, DO, certified nurse-midwife, ob-gyn nurse practitioner or ob-gyn clinical nurse specialist with an expected date of delivery, which is required under BEM 233B. The record also does not show that Claimant provided a DHS-49, Medical Examination Report; DHS-54A, Medical Needs; or another written statement regarding the continued deferral from JET. BEM 233B.

The record shows that Claimant did not produce any documentation or any other evidence of good cause to explain her failure to attend JET from August 15, 2011 through August 27, 2011. She did not call the Department during the week of August

15, 2011. In addition, Claimant failed to attend Triage on September 9, 2011. Had Claimant called the Department, she could have attended her Triage appointment via telephone, but she failed to do so.

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 complete her JET attendance requirements. As a result, the Department properly closed Claimant's FIP and FAP cases for non-compliance. Department policy indicates that a noncompliant group member will be sanctioned from the FAP group for the FIP noncompliance if they are not deferred from FAP work requirements. BEM 233B. No other group members had FAP sanctions due to noncompliance with the JET/WF program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that:

1. 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.
2. The Department properly terminated and sanctioned Claimant from the Food Assistance Program (FAP) for the WF/JET noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements.
3. The Department's decision to impose the 3 (three) month sanctions to Claimant's FIP and FAP cases was proper.

Accordingly, the Department's actions are AFFIRMED.

IT IS SO ORDERED.

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

Date Signed: 12/13/11

Date Mailed: 12/13/11

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

