

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012116
Issue No.: 1038
Load No.: [REDACTED]
Hearing Date: October 28, 2011
Macomb County DHS (02)

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 28, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Manager, 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 deferred from JET participation until 5/2011.
3. In 5/2011, Claimant began JET attendance while simultaneously seeking a basis for deferral from JET participation based on a long-term disability.
4. Claimant had a 20 hour per week JET participation requirement.
5. For the week beginning 5/8/11, Claimant attended JET 12 of 20 hours.

6. For the week beginning 5/15/11, Claimant attended JET for 9 hours.
7. On 6/6/11, DHS mailed Claimant a Notice of Noncompliance (Exhibit 1) scheduling a triage for 6/17/11.
8. Claimant failed to attend the triage.
9. DHS subsequently found Claimant to be noncompliant with JET participation.
10. On 6/21/11, DHS mailed Claimant a Notice of Case Action (Exhibit 2) informing Claimant of a FIP benefit termination to be effective 8/2011.
11. On 9/16/11, Claimant requested an administrative 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 undersigned will refer to the DHS regulations in effect as of 6/2011, the month of the DHS decisions 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.*

The WEI is considered non-compliant for failing or refusing to appear and participate with JET or other employment service provider. *Id.* at 2. Note that DHS regulations do

not objectively define, "failure or refusing to appear and participate with JET". Thus, it is left to interpretation how many hours of JET absence constitute a failure to participate.

DHS regulations provide some guidance on this issue elsewhere in their policy. A client's participation in an unpaid work activity may be interrupted by occasional illness or unavoidable event. BEM 230 at 22. A WEI's absence may be excused up to 16 hours in a month but no more than 80 hours in a 12-month period. *Id.*

In the present case, Claimant began JET participation in 5/2011 following a period in which she was deferred from participation. Claimant contended she was still medically unfit to attend JET regularly, but began her attendance so as not to jeopardize her FIP benefits. It was not disputed that Claimant attended 12 hours of JET during the week beginning 5/8/11 and 9 hours for the week beginning 5/15/11. In total, Claimant completed 21 of the 40 required JET participation hours over the period of 5/8/11-5/21/11.

Even applying 16 hours of excused absences to Claimant's absences would still create a period which would establish 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 contended that she was mentally unfit to attend JET. Claimant's excuse presents a second issue, whether DHS properly followed the procedures for evaluating Claimant for a long term disability.

When an individual claims to be disabled or indicates an inability to participate in work or the work participation program for more than 90 days because of a mental or physical

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condition, the client should be deferred in Bridges. BEM 230A at 10. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. *Id.*

Once a client claims a disability he/she must provide DHS with verification of the disability when requested. *Id.* The verification must indicate that the disability will last longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.* The client will be required to fully participate in the work participation program as a mandatory participant. *Id.*

DHS alleged that Claimant was given opportunities to provide medical documentation which verified her psychological barriers preventing JET participation but Claimant failed to provide any verification. Claimant responded that her therapist provided DHS and MWA with the needed documentation.

Claimant's testimony that her therapist provided documentation can be given little weight because of its second-hand nature. Similarly, DHS failed to obtain Claimant's case file for the hearing. Had DHS brought the file, it could have been checked to help determine whether the disability documents were provided. It also did not help DHS that the testifying specialist was absent for a portion of the hearing. Thus, neither side provided compelling evidence concerning whether Claimant submitted medical disability documents.

Claimant also contended that she believed that she personally submitted medical documents to DHS on 6/14/11 and signed a log which would have verified the submission. In response, DHS checked the drop bog log over a period of 6/10/11-6/24/11, in which a submission from Claimant on 6/20/11 was verified, but the submission concerned a document unrelated to the present matter. Whether the disability documents were submitted is relevant for determining whether DHS properly failed to consider Claimant's claim of suffering a long-term incapacity.

It should be noted that clients are not generally permitted to claim a general inability to attend JET as a basis for not attending JET. Clients found by DHS to be non-deferred JET participants may establish good cause for days when they are absent but may not do so based on a general claim of disability; claims of disability concerning JET participation are not issues that are reviewable at an administrative hearing. BEM 230A at 16. In other words, it is more appropriate for clients to claim that they were mentally unfit on a certain date rather than to claim that a general condition prevented JET participation. Claimant did not provide a specific excuse for the days in which she was absent from JET.

Also problematic for Claimant is that she failed to attend a triage on 6/17/11. The triage is the appropriate time to discuss Claimant's excuses to not attending JET. Claimant did

not provide a credible excuse for failing to attend the triage. Claimant's testimony may have been more credible had she attended the triage and asserted a basis for a failure to attend JET at that time.

Based on the presented evidence, it is more likely than not that Claimant failed to provide DHS with a basis for a long-term capacity. Accordingly, it is found that DHS properly did not evaluate Claimant for a long-term capacity. Claimant also failed to establish a basis for good cause for her JET participation absences.

It was not disputed that Claimant's noncompliance with JET participation was the basis for the FIP benefit termination. As it was established that Claimant was noncompliant with JET participation, it is found that DHS properly terminated Claimant's FIP benefits.

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 7/2011 based on noncompliance with JET participation. The actions taken by DHS are AFFIRMED.



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

Date Signed: November 2, 2011

Date Mailed: November 2, 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).

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:

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- 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

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cc:

