

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-12698
Issue No: 1038
Case No: [REDACTED]
Hearing Date: January 4, 2012
County: Calhoun

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 November 8, 2011. After due notice, a telephone hearing was held on January 4, 2012. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Case Manager) and [REDACTED] (JET Policy Specialist/Case Manager).

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 and was required to complete 20 (twenty) hours of weekly employment activity.
2. On May 9, 2009, Claimant completed a Barriers and Referrals-Family Self Sufficiency Plan [Family Automated Screening Tool (FAST)] and identified the lack of reliable transportation and no driver's license as employment barriers. (Department Exhibit 14).
3. The May 9, 2009 FAST survey also indicated that Claimant needed a potential referral for services to improve language and/or math skills for a family member. (Department Exhibit 14).

4. On May 26, 2009, Claimant, as part of her required WF/JET program, signed a written agreement to contact the WF/JET office and DHS if any of the following apply: (1) she was unable to report in as assigned; (2) she had any change in circumstances where she will not be able to complete full job search for the week; (3) she lost a job for any reason; (4) she had any reduction in employment hours; (5) if DHS was assisting her with child care payments and (6) she had any change in address, phone number or contact information. (Department Exhibit 2).
5. Claimant was employed as a housekeeper at a local [REDACTED] during the time period at issue.
6. Due to the nature of her employment as a housekeeper at [REDACTED], Claimant's actual work hours varied from week to week. (Department Exhibit 8).
7. In order for Claimant to meet her 20 hour requirement, Claimant was permitted to supplement her reduced work hours with community service and/or Job Search and Job Readiness (JS/JR). (Department Exhibit 21).
8. In February, 2011, Claimant reported to the WF/JET office that she had been taking her son to therapy at least twice a week for 2 hours each visit. (Department Exhibit 8). Claimant's JET worker informed Claimant that the hours from the therapy visits may count toward participation. (Department Exhibit 8).
9. On July 19, 2011, Claimant requested assistance with an auto purchase and was advised that she must first meet her 20 hours of work requirements for at least 30 (thirty) days. (Department Exhibit 8).
10. On July 20, 2011, Claimant brought in pay stubs from May 30, 2011 through July 10, 2011 indicating that she averaged 25 (twenty-five) hours per week. (Department Exhibit 8).
11. The WF/JET office determined that because Claimant had averaged 25 (twenty-five) hours of employment each week, her child's speech therapy appointments were no longer a barrier to her employment. (Department Exhibit 8).
12. On July 20, 2011, the WF/JET office informed Claimant that "she no longer needs to report to JET with any other hrs as she is meeting 20 hr/wk requirement." (Department Exhibit 8).
13. On September 30, 2011, Claimant provided the WF/JET office with pay stubs from August 8, 2011 through September 18, 2011 which indicated she averaged 17.79 hours per week. (Department Exhibit 7).

14. On October 4, 2011, Claimant was referred to triage because she did not meet the required 20 hours of amount of weekly participation and because she failed to timely report her decrease in hours. (Department Exhibit 7).
15. On October 6, 2011, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) and scheduled a Triage appointment on October 17, 2011 at 2:50pm. (Department Exhibit 35).
16. Claimant attended the October 17, 2011 Triage and stated that she was informed that her child's speech therapy appointments were countable as work-related activity. (Department Exhibit 7).
17. On October 18, 2011, the Department found Claimant did not show good cause for her noncompliance. (Department Exhibit 22).
18. The Department mailed Claimant a Notice of Case Action (DHS-1605) on October 31, 2011, closing Claimant's FIP benefits due to her failure to participate in employment and/or self-sufficiency related activities. (Department Exhibits 11-13).
19. Claimant submitted a hearing request on November 8, 2011, protesting the closure of her FIP benefits. (Request for Hearing).
20. According to the Department, the instant matter, if upheld, would be Claimant's second non-compliance with the WF/JET 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 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. BEM 229. 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. BEM 229. The 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 for FIP, when a client's reason for deferral ends, or a member add is requested. BEM 229.

Federal and State laws require each work eligible individual (WEI) in the FIP and Refugee Assistance Program (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. WEIs not referred to the work participation program will participate in other activities to overcome barriers so they may eventually be referred to the work participation program or other employment service provider. BEM 230A.

At application, the registration support staff must provide clients with a DHS-619, Jobs and Self-Sufficiency Survey. BEM 229. The Department is required to do the following: (1) make a preliminary barrier assessment to determine the client's readiness for work participation program referral¹; (2) identify and provide direct support services as needed because child care and transportation barriers are common (DHS is responsible and must assist clients who present with child care or transportation barriers before requiring work participation program attendance); (3) open/edit the Family Self-Sufficiency Plan (FSSP) and enter strength and barrier information identified and addressed during the intake process; (4) temporarily defer an applicant with identified barriers until the barrier is removed; and (5) temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made, such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities.²

At application, the Department is required to use the Bridges DHS-1538, Work and Self-Sufficiency Rules, to explain all of the following to clients at FIP application for each episode of assistance: (1) direct support services opportunities, including transportation and child care required to attend orientation; (2) work requirements and reasons why a

¹ Policy requires the Department to be alert to indicators that the client or family members suffer from undisclosed or undiagnosed disabilities. Some disabilities diminish the individual's ability to recognize or articulate his/her needs or limitations. The Department should temporarily defer clients who need further screening or assessment. BEM 229.

² Clients should not be referred for orientation and the work participation program until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. BEM 229.

person may be deferred from the work participation program and work requirements; (3) self-sufficiency requirements; (4) penalties for non-compliance, the triage and hearing processes and good cause; (5) earnings or activity reporting and verification requirements, including the semi-annual reporting requirement for families with earnings; (6) domestic violence; (7) FIP is limited to a 48 month lifetime limit per individual (See BEM 234, FIP Time Limit); and (8) prohibited use of FIP for gambling, massage parlors, spas, tattoo shops, bail-bond agencies, adult entertainment, cruise ships, other nonessential items or to purchase lottery tickets, alcohol, or tobacco. BEM 229.

At application, the Department is required to ensure the client understands his/her responsibility to participate in employment-related activities including, but not limited to, calling before they are unable to attend a meeting or appointment and before they become noncompliant. The Department shall also coordinate with the client an agreed upon date for attendance at orientation. This will eliminate the need for multiple assignment dates or appointment changes. BEM 229.

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230A.

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process; (3) develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP); (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview. BEM 233A.

Noncompliance also can be found if an applicant, recipient or a member add, without good cause, does any of the following: (1) states orally or in writing a definite intent not to comply with program requirements; (2) threatens, physically abuses or otherwise behaves disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity; or (3) refuses 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.

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.

In the instant matter, there were two Department representatives who attended the hearing. During the hearing, the two Department representatives did not agree regarding whether Claimant should have been found in noncompliance and/or whether or not Claimant had shown good cause for her alleged noncompliance. Based on the hearing record, the Department's rationale for finding that Claimant was noncompliant is unclear. The hearing summary indicates that the Claimant was referred to Triage for falling below her required 20 hours per week. However, one of the Department representatives stated that Claimant's noncompliance was based on her failure to timely report a change in her hours of employment.

The record reveals that Claimant had an identified barrier to employment because she had transportation issues and her son required regular speech therapy treatment

sessions. In late February, 2011, the JET office was aware that Claimant's employment hours were not static and that she had been using bus passes to take her son to and from therapy appointments. There is evidence in the record that Claimant's JET worker informed Claimant her son's therapy appointments may be used toward her work-related participation. However, there is no evidence that Claimant was clearly instructed and informed that the therapy appointments were considered "employment barriers" which were conditioned upon her ability to work 20 hours per week. The Department has failed to show that this important factor was communicated to the Claimant at any time. Even the February 25, 2011 note authored by Norm Harden indicates, "She is taking her son for physical therapy twice per week for about 2 hrs each day. She will bring me the verification from the doctor **and hrs may count toward participation.**" (See Department's Exhibit 8). The Department later received documentation to show that Claimant had temporarily met her 20 hour per week work requirements from May 30, 2011 through July 10, 2011. There is no evidence in this record to show that Claimant was provided with instructions that she was no longer permitted to use her son's physical therapy appointments toward her participation requirements when her work hours fluctuated below 20 hours. When Claimant was informed that she had fallen below her 20 hour requirement, she actually stated that she could work more hours.

This Administrative Law Judge agrees with the Department representative who contends that Claimant had shown good cause. Here, Claimant brought in her paystubs and paperwork repeatedly during her participation in the WF/JET program. Claimant did report employment, turned in her check stubs and verified her barriers. The Department was aware that Claimant's employment hours fluctuated and that Claimant's son required speech therapy appointments, which acted as a barrier to Claimant's 20 hours of employment requirement.

There is no evidence that Claimant has intentionally circumvented her employment-related requirements. There is no dispute that Claimant was continuously employed as a housekeeper during the period of time in question. Although Claimant's hours have fluctuated due to the nature of her employment, Claimant has maintained stable employment. In doing so, Claimant has demonstrated personal responsibility toward self-sufficiency. The Department did not question Claimant's fluctuation in her hours until she provided paystubs that showed her hours increased. It was not until Triage that Claimant was informed that her barrier to employment ended and that she could not use her son's speech therapy appointments toward her hourly requirements. Most important, the Department was aware that Claimant's hours fluctuated at Best Western. The Department has not produced evidence to convince this Administrative Law Judge that Claimant has clearly and intentionally violated her employment-related requirements.

To the extent Claimant may have been noncompliant with her employment-related requirements; this Administrative Law Judge finds that Claimant has shown good cause. The best information available during the triage and prior to the negative action date demonstrates that Claimant had a valid reason to expect that her son's therapy appointments would count toward her participation requirements. Claimant was not

clearly instructed otherwise before Triage. The Department has not sufficiently shown that Claimant was advised that she was no longer permitted to supplement her hourly requirements with her son's speech therapy appointments. Claimant had no reason to believe that where her weekly employment hours fell below 20 hours, she was forever barred from using her son's appointments to count toward her requirements. There is no evidence in the record that Claimant's employment barrier had been permanently resolved. Claimant had no reason to believe that her speech therapy sessions would not count when her employment hours fell below the 20 hour requirement. Where the Department failed to clearly communicate this crucial factor, Claimant's purported noncompliance with employment and/or self-sufficiency-related activities was beyond her control.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, the Department has failed to show Claimant was noncompliant with the WF/JET program and/or the Department has failed to show that Claimant did not have good cause. As a result, the Department did not properly close Claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law and for the reasons stated on the record, decides that the Department did not properly close Claimant's FIP case for noncompliance with WF/JET requirements and the Department's decision to impose sanctions is REVERSED.

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

Reinstate Claimant's case back to the date of closure and re-engage Claimant with the WF/JET program.

It is SO ORDERED.

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

Date Signed: 1/11/12

Date Mailed: 1/11/12

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

