

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

IN THE MATTER OF:



Reg. No: 2012-16359
Issue No: 1038
Case No: [REDACTED]
Hearing Date: January 12, 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 December 1, 2011. After due notice, a telephone hearing was held on January 12, 2012. Participants on behalf of Claimant included Dominique Davis. Participants on behalf of Department of Human Services (Department) included Penny Barnes (DHS Case Manager) and Julie Ann LaRochelle (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. (Department Exhibit J-1).
2. Claimant, as part of her required participation in the WF/JET program, was required to report to at least JET 20 (twenty) hours of job search activities per week. (Department Exhibits J-1, J-2).
3. On or about November 1, 2011, Claimant submitted job lead logs from the week of October 24, 2011. (Department Exhibit J-8).
4. According to Claimant's job lead reports, she visited 5 (five) businesses in person during the week of October 24, 2011, but she did not indicate any specific addresses, phone numbers or names of contact persons.

Claimant indicated that each business was located in "Battle Creek, MI." (Department Exhibit J-8).

5. Claimant's job lead report indicated that she visited [REDACTED] [sic] on October 26th from 4:00pm to 6:00pm in Battle Creek (it is believed Claimant actually meant "Quizno's"). (Department Exhibit J-8).
6. Claimant also reported on her job lead sheet that she visited [REDACTED] [REDACTED] in Battle Creek on October 27th from 3:00pm to 4:00pm. (Department Exhibit J-8).
7. On November 1, 2011, the Department discovered that [REDACTED] in Battle Creek had 2 (two) locations and that both locations had closed. (Department Exhibit J-5).
8. The Department contacted [REDACTED] on November 1, 2011 and learned that Claimant was not registered with Kelly Services and that Claimant's name did not appear on their computer database. (Department Exhibit J-5).
9. On November 3, 2011, the Department contacted Claimant regarding the entries on her job lead sheets. Claimant indicated she visited the [REDACTED] in Battle Creek and they told her to apply in Kalamazoo. Claimant also stated she did not understand why [REDACTED] did not have her in their database. (Department Exhibit J-1).
10. On November 1, 2011, the Department referred Claimant to Triage for falsifying her job lead sheets. (Department Exhibit J-5).
11. On November 4, 2011, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) which scheduled a Triage appointment for November 15, 2011 at 1:10pm. The deadline for Claimant to show good cause was November 14, 2011. The notice indicated that failure to show good cause could result in loss of benefits. (Notice of Noncompliance).
12. On November 15, 2011, Claimant attended the Triage and stated that she applied for a job at the [REDACTED] located on [REDACTED] but that she mistakenly indicated [REDACTED] on her job lead sheet. With regard to [REDACTED], Claimant claimed that she filled out some paperwork but may not have completed all the required paperwork. The Department found Claimant did not show good cause for her noncompliance. (Department Exhibit J-1).

¹ The Department discovered that the Quizno's on Gull Road in Kalamazoo had moved to a different location at the time Claimant states she visited the location. (See Department Exhibit J-1).

13. The Department mailed Claimant a Notice of Case Action (DHS-1605) on November 22, 2011, closing Claimant's FIP benefits for 6 months effective January 1, 2012 due to her failure to participate in employment and/or self-sufficiency related activities. (Notice of Case Action)
14. Claimant submitted a hearing request on December 1, 2011, protesting the closure of her FIP benefits. (Request for Hearing).
15. This is Claimant's second non-compliance with the WF/JET program. (See Department Exhibits J-5, J-6 and J-7).

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.

The work participation program is administered by the Workforce Development Agency, State of Michigan (WDASOM) through the Michigan one-stop service centers. The work participation program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. BEM 230A.

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. All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. WEIs who are temporarily deferred are required to participate in activities that will help them overcome barriers and prepare them for employment or referral to an employment service provider. 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.

Here, the evidence shows that Claimant falsified her job lead sheets from week of October 24, 2011. This Administrative Law Judge does not believe that Claimant's job search report is legitimate. It is significant that Claimant did not identify on her job lead sheet any specific address, contact person or phone for any business that she purportedly visited. The Quizno locations Claimant purportedly visited were not open at the time. Moreover, Kelly Services had no record that Claimant personally applied for employment. Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dept of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich

App 190, 195; 555 NW2d 733 (1996). Claimant's statements regarding [REDACTED] and [REDACTED] are not credible.

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 provide legitimate documentation of job search activities. As a result, the department properly closed 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, decides that the Department properly closed Claimant's FIP case for noncompliance with WF/JET requirements and the 6 (six) month sanction is AFFIRMED.

It is SO ORDERED.

/s/

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

Date Signed: 1/13/12

Date Mailed: 1/13/12

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

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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

