

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

IN THE MATTER OF:



Reg. No: 20122193
Issue No: 1038
Case No: [REDACTED]
Hearing Date: October 26, 2011
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's for a hearing. After due notice, a telephone hearing was held on October 26, 2011. Claimant appeared and provided testimony.

ISSUES

1. Did the department properly terminate and sanction Claimant's Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements?
2. Did the department properly discontinue Claimant's FIP and Food Assistance Program (FAP) benefits where Claimant's hearing request was timely and he requested that such benefits be continued during the pendency of his administrative hearing decision?

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 August 19, 2011, the department mailed Claimant a Notice of Noncompliance (DHS 2444) for his failure to participate as required in employment and/or self-sufficiency related activities. The Notice scheduled a triage appointment for August 24, 2011 at 9:30 a.m. The Notice further advised Claimant that he had until August 29, 2011 to demonstrate good cause for his non-compliance. (Department Exhibits 3-4)

3. Claimant did not attend the August 24, 2011 triage appointment and did not submit any documentation by the August 29, 2011 deadline to demonstrate good cause for his non-compliance. (Department Hearing Summary)
4. On August 30, 2011, the department mailed Claimant a Notice of Case Action (DHS 1605) advising him that, effective October 1, 2011, his FIP case would be closed and sanctioned for a three-month period for his failure to participate as required in employment and/or self-sufficiency related activities. The Notice further advised Claimant that, from October 1, 2011 through October 31, 2011, his FAP benefits would be reduced for his failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibit 7)
5. On September 12, 2011, the department mailed Claimant a Notice of Case Action (DHS 1605) advising him that, effective October 1, 2011, his FAP benefits would be decreased to [REDACTED] per month based on a change in his total monthly income amount. (Department 2).
6. On September 22, 2011, Claimant submitted a hearing request protesting the closure of his FIP case and requesting a continuation of his FIP and FAP benefits during the pendency of an administrative decision on his hearing request.

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. 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 of that decision. 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 administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in the Code of Federal Regulations (CFR), 7 CFR 273.1 *et seq.* Department policies for both programs 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. 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 group to participate in the 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 Licensing and Regulatory Affairs (LARA) 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 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.

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. The Department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period.

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:

- . 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.
- . For the second occurrence on the FIP case, close the FIP for not less than 3 calendar months.
- . 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.

Department policy further 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. Department policy further indicates that the department's computer system, Bridges, must budget the last FIP grant amount into the FAP budget and the FIP grant amount is only removed from the FAP budget at the end of the FIP penalty period. BEM 233B. For individuals serving a lifetime sanction, Bridges will remove the FIP income from the FAP budget once the individual reaches their FIP lifetime time limit. BEM 233B.

In this case, on August 19, 2011, the department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant did not attend his scheduled JET appointment on June 27, 2011 and did not provide any documentation deferring him from attending the appointment. And, because Claimant did not attend his triage appointment or otherwise demonstrate good cause for his noncompliance, the department closed Claimant's FIP case for a three-month sanction period.

At the hearing, Claimant testified that he did not attend his scheduled JET appointment because he was disabled and unable to work at that time. Claimant further testified that he had asked his DHS case worker to provide him with the medical forms that he needed to complete to obtain a medical deferral and his case worker never sent the forms to him. Claimant further testified that he obtained a medical statement from his physician rendering him unable to work until July 5, 2011 and that he did in fact return to work in August 2011. However, Claimant acknowledged that he did not at any time provide this medical statement to the department, notwithstanding that he was on notice as of August 24, 2011 (when he indicated he received the Notice of Noncompliance) that he had until August 29, 2011 to demonstrate good cause for his noncompliance with the JET program, the demonstration of which would have prevented the closure of his FIP case.

Claimant's DHS case worker testified that, had Claimant submitted the medical statement to the department prior to the August 29, 2011 deadline, she would have considered the medical statement sufficient to establish good cause for Claimant's noncompliance. The DHS case worker further testified that Claimant did timely request the continuation of his FIP and FAP benefits during the pendency of an administrative decision on his hearing request – and that it was department error not to have granted Claimant's request in this regard.

Accordingly, the Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause for his failure to participate as required in employment and/or self-sufficiency related activities and the department properly terminated and sanctioned Claimant's FIP case. The Administrative Law Judge further finds that, based on the material and substantial evidence presented during the hearing, the department improperly denied Claimant's request for a continuation of his FIP and FAP benefits during the pendency of an administrative decision on his hearing request.

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 non-compliance with WF/JET requirements and the three-month sanction is UPHeld.

The Administrative Law Judge further decides that the department improperly denied Claimant's request for a continuation of his FIP and FAP benefits during the pendency of an administrative decision on his hearing request and the department is ordered to issue Claimant any retroactive FIP and FAP benefits to which he is otherwise entitled.

It is SO ORDERED.

/s/
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 27, 2011

Date Mailed: October 28, 2011

NOTICE: The 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.

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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.

SDS/cr

cc:

