

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20122269
Issue No.: 1038, 5003
Case No.: [REDACTED]
Hearing Date: November 2, 2011
Wayne County DHS (31)

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 November 2, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], [REDACTED] Michigan Works! Agency (MWA) Representative, and [REDACTED], Specialist, appeared and testified.

ISSUES

1. The first 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.
2. The second issue is whether DHS properly failed to process a State Emergency Relief (SER) application allegedly submitted by Claimant.

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 an ongoing JET participant.
3. Claimant had a 20 hour/week participation requirement.

4. Claimant was required to perform job search activities or community service to satisfy her weekly JET participation requirement.
5. Claimant's MWA worker failed to receive Claimant's job search verifications for the weeks beginning 7/15/11 and 7/22/11.
6. On an unspecified date, DHS found Claimant to be noncompliant with JET participation.
7. On 8/8/11, DHS mailed Claimant a Notice of Noncompliance (Exhibit 1) informing Claimant of a triage to be held on 8/17/11.
8. Claimant failed to attend the triage.
9. On 8/18/11, DHS mailed Claimant a Notice of Case Action (Exhibit 2) informing Claimant of a termination of FIP benefits, effective 9/2011 due to noncompliance with JET participation.
10. In 8/2011, Claimant did not submit a SER application to DHS.
11. On 9/27/11, Claimant requested a hearing to dispute the termination of FIP benefits and a failure by DHS to process a SER application allegedly submitted by Claimant.

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 controlling DHS regulations are those that were in effect as of 8/2011, the month of the DHS decision 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 (MWA). *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.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. *Id.* Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.
- Failing or refusing to appear and participate with JET or other employment service provider.
- Failing or refusing to complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
- Failing or refusing to develop a Family Self-Sufficiency Plan (FSSP).
- Failing or refusing to comply with activities assigned on the FSSP.
- Failing or refusing to provide legitimate documentation of work participation.
- Failing or refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing or refusing to participate in employment and/or self-sufficiency-related activities.
- Failing or refusing to accept a job referral.
- Failing or refusing to complete a job application.
- Failing or refusing to 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. *Id.* at 1-2.

MWAs offer various ways that clients can meet their weekly participation requirements. Some of the allowable methods in meeting participation include: attending school or other trainings, on-site MWA attendance or independent job search. Claimant's JET participation required independent job search to be verified by the submission of job search documents which would equate to 20 hours/week of activities.

DHS contended that Claimant was noncompliant with JET participation by failing to submit any verification of job search activities for a two week period, the weeks beginning 7/18/11 and 7/25/11. Claimant responded that she submitted the necessary

documents to an MWA representative that she believed to be her assigned MWA worker.

There was ample evidence that tended to support the DHS finding of noncompliance. Claimant failed to attend a triage, a meeting specifically mandated to give clients an opportunity to explain why they believe a finding of noncompliance was improper. Claimant alleged she did not receive the triage notice until one day following the triage meeting. Claimant's DHS specialist credibly testified that Claimant never contacted her about missing the triage. Generally, clients that do not bother to attend triage meetings are more likely to be negligent in JET participation.

Claimant's DHS specialist credibly testified that Claimant did not bother to call her after the triage to assert that she was non-compliant or that she missed the triage through no fault of her own. Generally, a client that was compliant should be contacting DHS to rescheduled a missed triage or to explain why he/she should not have been determined to be noncompliant.

The MWA representative also testified that Claimant should have known that he was her assigned MWA worker and that Claimant should have known to submit any job search documents to him. He stated that at Claimant's JET orientation, he made a presentation identifying himself as the assigned specialist for all in attendance. However, that was not the representative's final word on the matter.

After further consideration, the MWA representative testified that he believed Claimant's excuse and that he felt much less confident about the noncompliance determination. Though there was ample evidence to question the validity of Claimant's excuse, it is difficult to not defer to the opinions of an MWA representative that conceded doubts about a finding of noncompliance. The MWA representative possesses information about JET participation, generally and specific to Claimant, that neither a DHS specialist nor an ALJ could possess. Though other evidence tended to support a finding of noncompliance, the testimony of the MWA representative will control the decision in the present case. It is found that the noncompliance finding was improper. Accordingly, the FIP benefit termination based on JET participation noncompliance was improper.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, et seq., and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (formerly known as the Family Independence Agency) policies are found in the Emergency Relief Manual (ERM).

SER is a program which offers assistance for various client emergencies. Clients may seek assistance through SER for any of the following: heat or gas bills, water bills,

electricity bills, home repairs, rent or mortgage arrearages, relocation expenses including rent and security deposit, food, burials or migrant hospitalization.

The application for SER is the DHS-1514, Application for State Emergency Relief. ERM 103 at 1. All SER applicants must complete this form unless they apply online through MIBridges for an energy-related service. *Id.*

Claimant contended that she applied for SER for assistance with rent. Claimant did not recall when she applied, only that she did. DHS denied ever receiving Claimant's SER application.

Claimant had numerous problems with her testimony. First, Claimant stated she kept a copy of the application that she allegedly submitted, however, she did not bother to bring a copy of it to the hearing. Secondly, DHS advised Claimant to reapply for SER during a conversation on 9/27/11; Claimant did not bother to reapply despite the specialist's advice. This tends to indicate that Claimant really had no interest in applying for SER. It is found that Claimant did not apply for SER and that DHS properly would have had no reason to evaluate Claimant's eligibility for SER without the application.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly failed to evaluate Claimant for SER because Claimant failed to submit an application for SER. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefits effective 9/2011. It is ordered that DHS shall:

- (1) reinstate Claimant's FIP benefits back to 9/2011;
- (2) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance; and
- (3) remove any disqualification from Claimant's disqualification history as a result of the improper finding of non-compliance.

The actions taken by DHS are PARTIALLY REVERSED.


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

20122269/CG

Date Signed: November 4, 2011

Date Mailed: November 4, 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:

- 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

CG/hw

cc:

