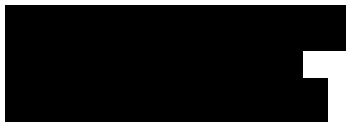


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 20122449
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: November 9, 2011
Macomb County DHS (20)

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 9, 2011 from Detroit, Michigan. The claimant appeared and testified; Jessica Schoensee also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED] Michigan Works! Agency (MWA) Representative, 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, if the noncompliance is established, whether DHS properly counted the noncompliance as Claimant's second in her disqualification history.

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 an unspecified weekly participation requirement with JET.

4. Claimant failed to receive credit from MWA for the following days and amount of hours: 8/17/11- 1.5 hours, 8/29/11- 5.5 hours, 8/30/11- 7 hours and 8/31/11- 7 hours.
5. DHS found Claimant to be noncompliant with JET participation for exceeding 16 hours of unexcused absences within a calendar month.
6. On 9/20/11, DHS mailed Claimant a Notice of Noncompliance (Exhibit B) informing Claimant of a triage to be held on 9/29/11.
7. Claimant attended the triage and stated that she failed to attend JET and perform job search activities from 8/29/11-8/31/11 because her husband was unavailable to watch her children and a different family member was similarly unavailable to transport her to the MWA.
8. On 9/29/11, DHS mailed Claimant a Notice of Case Action (Exhibit D) informing Claimant of a termination of FIP benefits effective 11/2011 due to noncompliance with JET participation.
9. DHS considered the noncompliance to be Claimant's second.
10. On 9/29/11, Claimant requested a hearing to dispute the termination of FIP benefits and to dispute whether the noncompliance (if established) was her second noncompliance.

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 9/2011, 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. *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.*

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 1.5 hours of JET attendance and 5.5 hours of job search for 8/29/11 and 8/31/11 and 7 hours of job search on 8/30/11.

In the present case, the MWA representative testified that Claimant missed the following hours: 1.5 hours on 8/17/11, 5.5 hours on 8/29/11, 7 hours on 8/30/11 and 7 hours on 8/31/11. The total hours missed for 8/2011 was 21 hours. The 21 hours of unexcused absences exceeds the amount allowed by DHS regulations.

Claimant contended that her job search hours (5.5 for each day from 8/29/11-8/31/11) were not truly missed because Claimant attempted to submit her job search logs on 9/7/11 but the logs were refused by MWA. The testifying MWA representative stated that Claimant's job search logs were due 8/31/11 or 9/1/11 due to Claimant's absence from MWA on 8/31/11. Claimant conceded the tardiness but stated that she was unable to submit the job search logs sooner because she had no means to attend JET because her normal ride was not available. MWA responded that Claimant is given a daily stipend for transportation, above and beyond her FIP grant.

Part of a client's JET participation obligation is to submit job search activities and to submit them in a timely manner. Some discretion can be given for tardiness, when warranted. That allowance will be discussed below in terms of whether Claimant had good cause for the tardiness.

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 submitted the job search logs six days after the due date because she had no transportation to attend the MWA. Claimant stated that her normal ride was unavailable. When asked about public transportation, Claimant stated she had no money for public transportation. Claimant's excuse would be plausible except that her MWA provided her with a \$6/day stipend for transportation. Claimant cannot persuasively claim that she lacked money for transportation when she was given money for that very specific purpose. It is found that Claimant lacked good cause for failing to timely submit job search logs.

Claimant also testified that her spouse was absent from 8/29/11-8/31/11 which also contributed to a lack of participation. Claimant stated that her spouse was the CDC provider for her three year old child while she attended MWA. Claimant's excuse might justify an absence from JET on 8/31/11 for 1.5 hours; reducing 1.5 hours from the 21 hours of absences still places Claimant above the 16 hour excused absence threshold. There was no explanation for how Claimant's excuse addressed her failure to submit job search logs in a timely fashion. It is found that Claimant lacked good cause for a lack of participation with JET in 8/2011.

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.

Failure to comply with JET participation requirements without good cause results in FIP closure. *Id* at 6. The first and second occurrences of noncompliance results in a 3 month FIP closure. *Id*. The third occurrence results in a 12 month sanction. *Id*.

DHS contended that Claimant was also noncompliant with JET participation in 2/2009 and that the present case is Claimant's second noncompliance occurrence. Claimant contended that she was unaware of any 2009 noncompliance and that this case should involve her first noncompliance.

DHS presented four different documents (Exhibit C) concerning the 2009 noncompliance. DHS presented a VCL and Notice of Noncompliance scheduling a triage with Claimant, a Good Cause Termination documenting that Claimant failed to attend the triage and a Noncompliance Maintenance which contains various information from the 2009 noncompliance allegation.

Claimant testified that she remembered her FIP benefits were terminated in 2009 due to the commencement of unemployment benefits. Claimant also denied receiving previous notices concerning the 2009 noncompliance. Claimant testified that she and her family moved quite a bit and that she was unsure where she resided when the DHS notices were mailed. If Claimant's testimony was accepted as true, it would explain why Claimant did not attend the 2009 triage and why the issue was not raised sooner than two years after the DHS action.

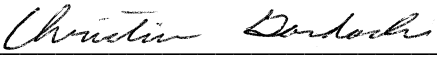
The DHS case was bolstered by a notation made on the VCL which documented a call between DHS and Claimant's father which confirmed the triage appointment two days prior to its scheduled date. Claimant interpreted the notation as evidence that she was not contacted. The evidence tended to establish that Claimant's father knew of the triage; it is probable he would have passed the information on to Claimant.

Based on the presented evidence, it is more likely than not that DHS appropriately pursued a noncompliance against Claimant in 2009. DHS presented all documents necessary to proceed with a FIP benefit termination based on noncompliance. Claimant presented testimony, but no documentation. It is found that the present case involves a second noncompliance for Claimant.

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 11/2011 based on noncompliance with JET participation and that the occurrence was the second lifetime noncompliance.

The actions taken by DHS are AFFIRMED.


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

Date Signed: 11/15/11

Date Mailed: 11/15/11

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:



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