

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-33018
Issue No: 1038
Case No: [REDACTED]
Hearing Date: April 4, 2012
County: Saginaw

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 February 9, 2012. After due notice, a telephone hearing was held on April 4, 2012. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (JET-Triage Specialist), [REDACTED] [REDACTED] (Triage Specialist).

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.
2. On December 9, 2011, Claimant, as part of her required participation in the WF/JET program, agreed to perform community service.
3. Claimant's community service site was at the [REDACTED].
4. On December 19, 2011, Claimant discovered that she was pregnant.

5. On December 20, 2011, Claimant signed a community service contract requiring her to perform report to JET 20 (twenty) hours of community service activities per week.
6. On December 28, 2011, Claimant called her WF/JET case worker and stated that her doctor placed her on bed rest. Claimant did not provide any verification.
7. On December 31, 2011, Claimant visited the [REDACTED] and was issued a work release from 12/31/11 though 1/9/12.
8. On January 9, 2012, Claimant called the WF/JET/MW office and stated that will not be able to complete her community service at the animal shelter because she is pregnant. The Department instructed Claimant to present to the WF/JET/Michigan Works (MW) office and pick up a new community service contract the next day (January 10, 2012 at 9:45 a.m.).
9. On January 9, 2012, the Department received a DHS-54 (Medical Needs-JET) form which indicated that Claimant can work with limitations.
10. Claimant did not pick up the community service contract on January 10, 2012 as scheduled.
11. On January 12, 2011, Claimant was provided with an Appointment with Career Manager Form, which scheduled her appointment with a JET manager for January 13, 2012 at 4:45p.m.
12. On January 13, 2011, Claimant called the WF/JET/MW office and stated the following: 1) that she had been in a car accident; 2) that she had her community service contract was signed and completed; and she requested that the WF/JET/MW office permit her to submit her completed community service contract via fax. The Department denied Claimant's request and informed her that she must be physically present by 4:45pm that day to complete the contract and review her required hours.
13. Claimant did not complete any required community service hours for December, 2011 and did not attend her scheduled appointment to complete a new community service contract.
14. Claimant did not have any WF/JET approved reduced participation requirements.
15. On January 24, 2012, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for February 2, 2012 at 11:20 a.m. Claimant was required to show good cause at the triage appointment. The notice indicated

that this was Claimant's first noncompliance with the WF/JET program and that failure to show good cause could result in loss of benefits.

16. On February 2, 2012, Claimant attended Triage via telephone and stated that on January 13, 2012 she was on her way to get her community service contract signed but was involved in a car accident. Claimant also claimed that she had to take her son to the Emergency Room (ER) following the accident. Claimant did not produce any verification and did not produce the signed community service contract. The Department found Claimant did not show good cause for her noncompliance.
17. The Department mailed Claimant a Notice of Case Action (DHS-1605) on February 2, 2012, closing Claimant's FIP benefits for 6 months effective March 1, 2012, due to her failure to participate in employment and/or self-sufficiency related activities.
18. Claimant submitted a hearing request on February 9, 2012, protesting the closure of her FIP benefits.
19. The Department did not provide any documentation in the hearing packet which confirmed that Claimant had a previous 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 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.

The Department's computer system ("Bridges") automatically denies FIP applicants still pending or creates a record of noncompliance when a member is added or client whose deferral is ending when attendance at the work participation program is not entered by the one-stop service center by the 22nd day after the day the work participation program referral is made. Bridges also automatically denies FIP when a client fails to continue to participate while the FIP application is pending. Clients can reapply for FIP at any time after their application is denied for failing to appear or participate with the work participation program. BEM 229.

When assigned, clients must engage in and comply with all work participation program assignments while the FIP application is pending. Work participation program engagement is a condition of FIP eligibility. Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. Bridges automatically denies FIP benefits for noncompliance while the application is pending. BME 229.

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.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A.

A disability that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. BEM 230A.

Clients are required to engage in self-sufficiency and family strengthening activities even if they are deferred from work participation program or work activities and may be subject to penalties if they do not participate as required. BEM 230A.

Modifications or extra help may include, but are not limited to, the following: (1) reduced hours of required participation; (2) extended education allowances including more than 12 months allowed for vocational education; or (3) extended job search/job readiness time limit. BEM 230A.

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours in which they are engaged, even if they do not meet federal work requirements. 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.

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A.

WEIs meeting one of the following criteria are only temporarily not referred to an employment service provider because they may continue to count in Michigan's federal work participation rate. BEM 230A. They are required to participate in activities that will

increase their full potential, help them overcome barriers and prepare them for employment or referral to an employment services provider as soon as possible. BEM 230A. If the WEI refuses or fails to provide verification of a deferral when required, the Department will refer him/her to the work participation program. BEM 230A. The Department must notify the /work participation program service provider immediately by phone or email when a client who was previously referred is granted a temporary deferral. BEM 230A.

If the WEI refuses or fails to provide verification of a deferral when required, the Department shall refer him/her to the work participation program. BEM 230A. Clients requesting a deferral from the work participation program due to pregnancy complications must provide verification that indicates that they are unable to participate. 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 Family Self-Sufficiency Plan (FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the 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.¹ 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

¹ The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

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.

Good cause includes the following: (1) the person is working at least 40 hours per week on average and earning at least state minimum wage; (2) the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information²; (3) the client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client; (4) the DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability; (5) the client requested child care services from DHS, the work participation program, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site; (6) the care is appropriate to the child's age, disabilities and other conditions; (7) the total commuting time to and from work and the child care facility does not exceed three hours per day; (8) the provider meets applicable state and local standards³; (9) the child care is provided at the rate of payment or reimbursement offered by DHS; (10) the client requested transportation services from DHS, the work participation program, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client; (11) the employment involves illegal activities; (12) the client experiences discrimination on the basis of age, race, disability, gender, color, national origin or

² This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A.

³ Also, unlicensed providers who are NOT registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

religious beliefs; (13) credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities⁴; (14) the client quits to assume employment comparable in salary and hours (the new hiring must occur before the quit); (15) total commuting time exceeds two hours per day, NOT including time to and from child care facilities or three hours per day, including time to and from child care facilities. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. Effective October 1, 2011, the following minimum penalties apply: (1) for the individual's first occurrence of noncompliance, FIP closure is for not less than three calendar months; (2) for the individual's second occurrence of noncompliance, FIP closure is for not less than six calendar months; (3) for the individual's third occurrence of noncompliance, FIP closure is a lifetime sanction. BEM 233A. The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count. BEM 233A.

Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A.

The sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

Testimony and other evidence must be weighed and considered according to its reasonableness.⁵ The weight and credibility of this evidence is generally for the fact-finder to determine.⁶ 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.⁷

In the instant matter, Claimant's version of events contains numerous inconsistencies. For instance, Claimant, for the first time at the hearing, introduced documentation which purportedly showed that she was involved in a car accident on January 13, 2012. However, Claimant presented letters from Covenant Emergency dated **February 13,**

⁴ Unplanned events or factors include, but are not limited to, the following: (1) domestic violence; (2) health or safety risk; (3) religion; (4) homelessness; (5) jail and (6) hospitalization. BEM 233A.

⁵ *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007).

⁶ *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

⁷ 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).

2012, which indicated that Claimant had brought her son to the ER for treatment following a motor vehicle accident. Claimant explained that she obtained copies of the letters from the ER after the accident and was unable to bring these documents to the triage because her son had spilled orange juice all over the original ER discharge papers. When asked about the date discrepancies (the letter indicates 2/13/12 and the 1/13/12 was the community service contract appointment date), Claimant indicated the 2/13/12 letter must have been a typographical error.

Another obvious problem is the fact that Claimant initially stated at triage that the community service was signed and that she merely needed to fax it to the WF/JET/MW office. But Claimant, at no time, produced a copy of the signed community service contract. She never produced a copy of the contract at triage or later at the hearing in this matter. There are too many inconsistencies in Claimant's story to be fairly attributable to mere coincidence. For this Administrative Law Judge to find good cause under these circumstances would take a stretch of the imagination. In the end, Claimant's statements are simply not credible.

There is no evidence that Claimant had a deferral or any other reason for her noncompliance with the WF/JET program. Claimant did not provide any medical verification to excuse her failure to complete her community service hours in December, 2011. The record shows that Claimant had multiple chances to make her community service contract appointment with the WF/JET/MW office but she failed to meet her obligations. From the onset, Claimant was placed on notice that her failure to cooperate may result in a loss of benefits. The record is also clear that the Department was attempting to work with Claimant to help prevent her being referred to triage. Claimant failed to make her scheduled appointment on January 13, 2012.

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 complete community service contract and attendance her January 13, 2012 appointment. 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's decision is AFRIRMED-IN-PART and REVERSED-IN-PART. The Department's decision to close Claimant's FIP case based on noncompliance with WF/JET requirements is upheld, but the 6 (six) month sanction is reversed because the Department did not meet its burden to show that Claimant had a prior noncompliance with the WF/JET program. Claimant shall be sanctioned for 3 (three) months because the Department was unable to produce verification in the record that she had a prior noncompliance.

It is SO ORDERED.

/s/

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

Date Signed: 4/10/12

Date Mailed: 4/10/12

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



2012-33018/CAP

MAHS