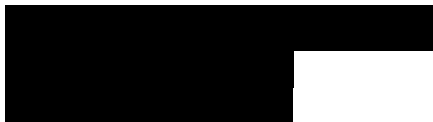


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

**IN THE MATTER OF:**



Reg. No.: 20123376  
Issue No.: 1038  
Case No.: [REDACTED]  
Hearing Date: November 9, 2011  
Macomb County DHS (02)

**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. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], JET Coordinator, appeared and testified.

**ISSUE**

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 third 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. On 6/15/11, DHS mailed Claimant a FAST Mandatory Notice (Exhibit A) and Family Assessment Screening Tool (FAST), advising Claimant to complete and return the FAST to DHS within 30 days.
3. On an unspecified date, Claimant completed and returned the FAST to DHS.

4. Claimant's DHS specialist did not receive the FAST.
5. On 7/15/11, DHS mailed Claimant a Notice of Noncompliance (Exhibit B) scheduling a triage for 8/15/11.
6. Claimant failed to attend the triage.
7. DHS found Claimant noncompliant with JET participation due to Claimant's alleged failure to return the FAST.
8. DHS found the noncompliance was Claimant's third lifetime noncompliance.
9. On 8/15/11, DHS initiated termination of Claimant's FIP benefits effective 9/2011 due to Claimant's alleged failure to complete and return a FAST to DHS.
10. On 9/9/11, Claimant requested a hearing to dispute the termination of FIP benefits and to dispute whether it was her third time noncompliant.

#### **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.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. 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.*

The present case involves an alleged failure to complete a FAST (Family Assessment Screening Tool). A FAST is a 50 page questionnaire required for completion prior to referral to JET orientation. DHS uses the questionnaire to evaluate the strengths and needs of clients.

It was not disputed that Claimant received notice to complete the FAST (see Exhibit A). It was also not disputed that Claimant contacted her DHS specialist because she was unable to complete the FAST online.

Claimant stated that she completed the FAST and returned it to DHS in a self-addressed stamped envelope. The testifying DHS specialist indicated that DHS did not receive Claimant's allegedly returned FAST. Though it is believed that Claimant's DHS specialist did not receive a FAST from Claimant, it would not preclude the possibility that DHS received the FAST and lost it en route to Claimant's specialist.

Claimant was asked questions about the content of the FAST. Claimant's testimony would have been more credible had she been able to state what questions were asked on the FAST. Claimant stated she could not remember any questions, other than one asking about who was in her household. Claimant also remembered the FAST as a checkbox type form rather than an essay or fill in the blank form.

DHS regulations contain copies of all of their documents. RFF 595 contains a sample FAST. The FAST is a 4 page document containing mostly questions requiring a checkbox answer. There was no question about listing household members. Generally, Claimant's testimony concerning the content of the FAST was not persuasive in establishing that she completed the FAST. Claimant properly identified the form as a checkbox form but she was even unsure of this fact. Claimant was not able to accurately identify any questions from the form. In fairness to Claimant, three months passed since she allegedly completed the FAST; thus, her inability to remember details may be more attributable to forgetting a document which required no reason for Claimant to remember it rather than a failure to complete the document.

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*.

DHS presented testimony that Claimant was mailed a Notice of Noncompliance (Exhibit B) scheduling the triage for 8/15/11 at 10:00 a.m. DHS testified that had Claimant attended the triage, she would have been asked to complete the FAST at that time without any noncompliance penalty. Claimant did not attend the triage. Claimant stated that she did not attend the triage because she did not receive notice of the triage. Claimant's mailing address had not changed, so there is no reason to believe there was any confusion concerning Claimant's mailing address. No documentation was requested from DHS concerning mailing the triage notice but DHS specialists typically rely on their database, Bridges, to mail correspondence. Bridges has been shown to be a generally reliable, though not infallible, method of mailing documents.

Generally, clients that quickly request hearings after receiving notices of benefit terminations are more likely to not have diligently acted in the JET participation process. DHS mailed a Notice of Case Action (Exhibit D) on 8/15/11. Claimant requested a hearing on 9/9/11, over three weeks after receiving the notice of termination. Claimant's response time tends to indicate she requested a hearing after not receiving FIP benefits in 9/2011. Had Claimant requested a hearing a few days after 8/15/11, this would have

tended to show that Claimant examines DHS notices and quickly responds to them. It is worth noting that Claimant's hearing request referred to communication with DHS on 8/23/11 concerning noncompliance; this tends to support a faster response by Claimant than indicated by the date of her hearing request submission.

Generally, clients who testify to facts at hearings are more credible when their hearing request contains similar statements. Claimant's hearing request also contains a written statement denying receiving notice of the triage. The hearing request focuses more on the submission of medical documents which were not relevant to the submission of FAST. DHS explained that a client must submit a FAST even if he/she is seeking a deferral from JET participation for medical reasons.

There is ample evidence to support all of the actions taken by DHS. Most notably was Claimant's inability to remember specific questions from the FAST. However, if Claimant bothered to report to DHS that she was unable to complete the online version of the FAST, it is likely that she would have completed the paper version and returned it to DHS. Other evidence was mixed and tended to neither bolster nor diminish Claimant's credibility. Based on the totality of the evidence, it is marginally more likely than not that Claimant completed a FAST and submitted it to DHS. As it is found that Claimant complied with completing and returning a FAST to DHS, it must be found that Claimant was not noncompliant with JET participation. Accordingly, the FIP benefit termination was improper. Though it is found that Claimant returned the FAST to DHS, DHS may require another FAST from Claimant as part of the JET engagement process.

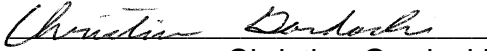
There was a dispute whether the DHS finding of noncompliance was Claimant's third lifetime noncompliance disqualification. Claimant would have difficulty in establishing a basis for jurisdiction to dispute prior findings of noncompliance based on 90 day deadlines (see BAM 600) from the issuance of written notice. For purposes of the present hearing, the issue is moot as the finding of noncompliance is reversed.

### **DECISION AND ORDER**

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:

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

The actions taken by DHS are REVERSED.

  
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:

