

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

IN THE MATTER OF:

LACRESHA REESE
19328 GABLE STREET
DETROIT MI 48234

Reg. No. 2012-6610
Issue No. 1038
Case No. 20126610
Hearing Date: December 7, 2011
Wayne County DHS (55)

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 December 7, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), Marie Davis, Specialist, appeared and testified.

ISSUES

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.

The second issue is, if the noncompliance is established, whether DHS properly reduced Claimant's Food Assistance Program (FAP) benefits.

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 and FAP benefit recipient.
2. Claimant was not an ongoing JET participant.
3. Claimant was given opportunities to attend JET on 6/22/11, 8/31/11 and 10/3/11.
4. Claimant failed to attend JET on each of the orientation dates.

5. On an unspecified date, DHS scheduled a triage with Claimant.
6. On 10/6/11, DHS held a triage and determined Claimant lacked good cause for her failure to attend multiple JET orientation dates.
7. On 10/10/11, DHS initiated termination of FIP benefits and a reduction of FAP benefits based on alleged noncompliance by Claimant in participating with JET.
8. The adverse FIP and FAP actions were to be effective 11/2011
9. On 10/19/11, Claimant requested a hearing to dispute the FIP termination and FAP benefit reduction.

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 10/2011, 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.*

It was not disputed that Claimant failed to attend multiple JET orientations. Claimant was scheduled to attend JET orientations on 10/3/11, 8/31/11 and 6/22/11. Claimant agreed that she failed to attend all of the orientations. Missing a scheduled appointment for JET orientation is a basis for DHS to find noncompliance with JET participation.

Claimant responded that she failed to attend the orientations because she never received notice of them. Claimant also conceded that she may have contributed to the lack of notice by failing to report an address change to DHS. Claimant stated she moved in 6/2011 but did not inform DHS of the address change until 11/2011. Claimant also testified that she was mourning the death of a child over the last several months and this tragedy may have contributed to her fail to report the address change.

Evidence revealed that Claimant's benefits were redetermined in 8/2011. A redetermination is a mandatory process in which clients have an opportunity and obligation to update all of their information with DHS. Claimant's excuse that she accidentally failed to report an address change for several months is significantly less plausible knowing Claimant had ample opportunity to report the change on a redetermination form or in a redetermination interview. It is found that Claimant may have not received notice of three JET orientation notices but that Claimant's failure to report an address change was the reason for not receiving notice. Claimant should not be excused for a lack of multiple notices when the fault rests with her.

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's only defense to her failure to attend JET was that she did not receive notice. This issue is discussed above and was determined favorably for DHS. Thus, Claimant had no basis for good cause. DHS established following all required procedures in the FIP benefit termination process. Accordingly, the termination of FIP benefits is affirmed.

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

DHS is to disqualify a FAP group member for noncompliance when all the following exist:

- the client was active both FIP and FAP on the date of the FIP noncompliance;
- the client did not comply with FIP employment requirements;
- the client is subject to a penalty on the FIP program;
- the client is not deferred from FAP work requirements; and
- the client did not have good cause for the noncompliance. BEM 233B at 2.

Clients meeting one of the criteria below are temporarily deferred from FAP employment-related activities:

- Age: Defer a person who is under age 16 or at least age 60, a 16- or 17-year old who is not the grantee or a grantee age 16 or 17 in special circumstances.
- Care of a Child: Defer one person who personally provides care for a child under age six who is in the FAP group.
- Care of Disabled Household Member: Defer one person who personally provides care for a disabled member of his/her own FAP group.
- Disability: Defer persons incapacitated due to injury, physical illness or mental illness.
- Education: A student enrolled up to half time in any recognized school, training program or institution of higher education meets the employment-related activities requirement. This includes persons attending school for GED or adult high school completion.
- Employment: Persons employed, self-employed or in work study an average of 30 hours or more per week over the benefit period or earning on average the federal minimum wage times 30 hours per week are not required to participate in any further employment-related activities. This includes migrant or seasonal farm workers with an employer or crew chief contract/agreement to begin work within 30 days.
- Pregnancy: Defer pregnant women, beginning the seventh month of pregnancy or earlier if a pregnancy complication is medically documented.
- SSI-FAP Applicant: Defer applicants who apply for both SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time.
- Substance Abuse Treatment Center Participant: Defer active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation. This does not include AA or NA group meetings. To verify use a verbal or written statement from the center.
- Unemployment Compensation (UC) Applicant or Recipient: Defer an applicant for or recipient of unemployment benefits. This includes a person whose unemployment benefits application denial is being appealed. BEM 230B at 3-5

There was no dispute that the FAP benefit reduction was solely based on Claimant's noncompliance with JET participation. Claimant did not assert any basis for deferral from FAP employment-related activities. The burden is properly placed on Claimant to assert a basis for deferral rather than require DHS to prove each basis for deferral is nonexistent. DHS established all other requirements to justify a FAP benefit disqualification. There was also no dispute that the disqualification was properly applied resulting in a reduction of FAP benefits. It is found that DHS properly reduced Claimant's FAP benefits due to employment-related activity disqualification.

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 and reduced FAP benefits effective 11/2011 based on noncompliance with JET participation. The actions taken by DHS are AFFIRMED.



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

Date Signed: December 15, 2011

Date Mailed: December 15, 2011

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

CG/ctl

cc: L. Reese
Wayne County DHS (55)
C. Cox
M. Holden
K. Mardyla-Goddard
T. Drain
G. Fournier
D. Shaw
L. Thunder
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File