

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 2012-73767  
Issue No: 1038  
Case No: [REDACTED]  
Hearing Date: October 4, 2012  
County: St. Clair

**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 August 27, 2012. After due notice, a telephone hearing was held on October 4, 2012. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (JET Coordinator).

**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. Since 2009 Claimant was a FIP recipient and a mandatory WF/JET participant who had been granted a child care deferral based on her son's disabilities.
2. Claimant had attended [REDACTED] as a full-time student since September, 2011.
3. The Department discovered that Claimant was a full time student at [REDACTED] in [REDACTED] of [REDACTED].
4. On July 11, 2012, the Department mailed Claimant a Work Participation Program Appointment Notice (DHS-4785) which scheduled Claimant for JET appointment at the [REDACTED] office on [REDACTED] at 8:30a.m.

5. Claimant failed to call or appear for the appointment on [REDACTED] at 8:30a.m.
6. On August 6, 2012, the Department mailed Claimant a second Work Participation Program Appointment Notice (DHS-4785) which scheduled Claimant for JET appointment at the [REDACTED] office on August 13, 2012 at 8:30a.m.
7. Claimant failed to call or appear for the appointment on August 13, 2012 at 8:30a.m.
8. On August 15, 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 August 22, 2012 at 9:00a.m. The notice indicated that failure to show good cause could result in loss of benefits.
9. On August 22, 2012, Claimant did not attend Triage. The Department found Claimant did not show good cause for her noncompliance.
10. The Department mailed Claimant a Notice of Case Action (DHS-1605) on August 15, 2012, closing Claimant's FIP benefits for 3 months effective September 1, 2012 due to her failure to participate in employment and/or self-sufficiency related activities.
11. Claimant submitted a hearing request on August 27, 2012, protesting the closure of her FIP benefits.
12. This is Claimant's first 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 (forty-eight) 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 JET Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. BEM 230A. 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. 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.

The work participation program is administered by the Workforce Development Agency, State of Michigan (WDASOM) through the Michigan one-stop service centers. BEM 230A. 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.

At application, the registration support staff must provide clients with a DHS-619, Jobs and Self-Sufficiency Survey. BEM 229. The Department is required to do the following: (1) make a preliminary barrier assessment to determine the client's readiness for work participation program referral<sup>1</sup>; (2) identify and provide direct support services as needed because child care and transportation barriers are common (DHS is responsible and must assist clients who present with child care or transportation barriers before requiring work participation program attendance; (3) open/edit the Family Self-Sufficiency Plan (FSSP) and enter strength and barrier information identified and

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<sup>1</sup> Policy requires the Department to be alert to indicators that the client or family members suffer from undisclosed or undiagnosed disabilities. Some disabilities diminish the individual's ability to recognize or articulate his/her needs or limitations. The Department should temporarily defer clients who need further screening or assessment. BEM 229.

addressed during the intake process; (4) temporarily defer an applicant with identified barriers until the barrier is removed; and (5) temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made, such as clients with serious medical problems or disabilities **or clients caring for a spouse or child with disabilities.**<sup>2</sup>

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.** BEM 229. **Work participation program engagement is a condition of FIP eligibility.** BEM 229. 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. BEM 229.

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. BEM 230A. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A. **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.** BEM 230A. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A. 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. BEM 230A. A client may disclose a disability at any time. BEM 230A. 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

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<sup>2</sup> Clients should not be referred for orientation and the work participation program until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. BEM 229.

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.

An 18 year old **adult** group member is considered a WEI and must attend the work participation program, regardless of school attendance. BEM 230A. Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. BEM 230A. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A. If the WEI refuses or fails to provide verification of a deferral when required, the Department may refer him/her to the work participation program. BEM 230A.

When a single parent personally provides care for a child under the age of six, the client will be deferred. BEM 230A. The Department may indicate that child care is not adequate. Adequate child care meets all of the following: (1) the care is appropriate to the child's age, disabilities and other conditions; (2) the total commuting time to and from work and child care facilities does not exceed three hours per day; (3) the provider meets applicable state and local standards (unlicensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements); (4) the child care is provided at the rate of payment or reimbursement offered by DHS. BEM 230A.

For clients who have a child care deferral (child under 6 (six) years of age), adequate child care must be unavailable. BEM 230A. Adequate child care meets all of the following: (1) Appropriate - the care is appropriate to the child's age, disabilities and other conditions; (2) Reasonable distance - the total commuting time to and from work and child care facilities does not exceed three hours per day; (3) Suitable provider - the provider meets applicable state and local standards (Unlicensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements). (4) Affordable - the child care is provided at the rate of payment or reimbursement offered by DHS. BEM 230A.

A spouse or parent who provides care for a spouse or child with disabilities living in the home is not a WEI and is not referred to the work participation program if: (1) the spouse/child with disabilities lives with the spouse/parent providing care; and (2) a doctor verifies all of the following in writing or by using a DHS- 54A, Medical Needs, form or DHS-54E, Medical Needs -Work Participation Program: (a) the spouse/child with disabilities requires a caretaker due to the extent of the disability; (b) **the spouse/parent is needed in the home to provide care**; (c) **the spouse/parent**

**cannot engage in an employment-related activity due to the extent of care required. BEM 233A.**

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 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.<sup>3</sup> 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 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

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<sup>3</sup> 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.

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 information<sup>4</sup>; (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 standards<sup>5</sup>; (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 religious beliefs; (13) credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities<sup>6</sup>; (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. 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);

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

(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.

Here, the Department determined that Claimant's child care deferral, which began in 2009, should end after learning that Claimant had been attending classes at [REDACTED] as a full-time student while receiving FIP benefits. The Department believed that if Claimant was attending college full-time, the reason for the deferral no longer existed since Claimant was no longer needed in the home to provide care. Claimant, on the other hand, contends that her JET deferral should continue. Claimant indicates that the Department's decision to mail her JET appointment notices was not justified because her son continues to suffer from disabilities.

It should be pointed out that Claimant did not indicate why she failed to inform the Department that she had been attending [REDACTED] on a full-time basis since 2011. In any event, Claimant's deferral in this case was grounded upon the notion that her presence in the home was necessary to provide care for her child who had several disabilities. However, Claimant testified that she was not in the home when she took her college courses and that she had arranged for care for her son during this time period. Policy provides that work participation program engagement is a condition of FIP eligibility. BEM 229.

In this case, the Department properly considered Claimant as a WEI based upon BEM 233A which provides in pertinent part, a person is not considered a WEI and is not referred to the work participation program if the parent is needed in the home to provide care and the parent cannot engage in an employment-related activity due to the extent of care required. BEM 233A. The evidence shows that Claimant is not needed in the home to provide care to her child as she was attending [REDACTED] classes full-time. Thus, the Department properly considered Claimant a WEI and properly referred Claimant to the JET program.

There is no dispute that Claimant failed to attend either of her JET appointments. During the hearing, Claimant testified that she "overlooked" her first JET appointment and "misread" the date for her second JET appointment. Claimant also testified that she had car trouble which explains her failure to attend Triage. None of these reasons constitute good cause.

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 her JET attendance requirements. 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 properly closed Claimant's FIP case for noncompliance with WF/JET requirements. The Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

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

Date Signed: October 9, 2012

Date Mailed: October 9, 2012

**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

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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/cr

cc:

