

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

IN THE MATTER OF:



Reg. No: 20129626
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
December 8, 2011
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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. After due notice, a telephone hearing was held on December 8, 2011. The claimant appeared and provided testimony.

ISSUE

Did the department properly terminate and sanction the 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. The claimant had applied for FIP benefits and was referred to the WF/JET program as a participant.
2. The claimant was sent a Notice of Noncompliance on October 11, 2011 due to allegedly falsifying job leads sheets for the week of September 25, 2011 and for not meeting her hourly requirement of the WF/JET program for the weeks of August 28, 2011, September 4, 2011, and September 25, 2011, as well as not attending a required class. (Department Exhibit 1).
3. A triage was scheduled for October 19, 2011. (Department Exhibit 1).

4. At the triage, the department did not find that the claimant had good cause for her noncompliance and sent the claimant a notice of case action (DHS 1605) on October 21, 2011 which stated that the claimant's case would be closing for a period of six months due to a second instance of noncompliance. (Department Exhibit 2).
5. The claimant submitted a hearing request on October 27, 2011.

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

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) and the Program Reference Manual (PRM).

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. 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. 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. 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. JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth (DELEG) through the Michigan Works Agencies (MWAs). 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. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-related activities, providing legitimate documentation of work participation, etc. BEM 233A.

Department policy states:

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 or refusing to:
 - .. Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
 - .. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - .. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
 - .. Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP) or PRPFC.
 - .. Appear for a scheduled appointment or meeting related to assigned activities.
 - .. Provide legitimate documentation of work participation.

- .. Participate in employment and/or self-sufficiency-related activities.
- .. Accept a job referral.
- .. Complete a job application.
- .. 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. BEM 233A, pp. 1-2.

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. BEM 233A. Department policy defines good cause as follows:

GOOD CAUSE FOR NONCOMPLIANCE

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.

Good cause includes the following:

- . The person is working at least 40 hours per week on average and earning at least state minimum wage.
- . The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. 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.

Illness or Injury

The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client.

Reasonable Accommodation

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. BEM 233A, pp. 3-4.

No Child Care

The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

- . **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions.
- . **Reasonable distance.** The total commuting time to and from work and child care facilities does not exceed three hours per day.
- . **Suitable provider.** The provider meets applicable state and local standards. Also, providers (e.g., relatives) who are NOT registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. See BEM 704.
- . **Affordable.** The child care is provided at the rate of payment or reimbursement offered by DHS.

No Transportation

The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc. BEM 233A, p. 4.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to the following:

- . Domestic violence.
- . Health or safety risk.
- . Religion.
- . Homelessness.
- . Jail.
- . Hospitalization.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

Long Commute

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, pp.4-5.

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. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

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 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.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period. 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.

If the department finds that the client has been noncompliant without good cause, the department must impose penalties. Department policy clearly states the penalties that must be imposed for noncompliance without good cause and for the action to be taken should the department determine that good cause has been established:

NONCOMPLIANCE PENALTIES FOR ACTIVE FIP CASES AND MEMBER ADDS

The penalty for noncompliance without good cause is FIP closure. Effective April 1, 2007, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for 3 calendar months unless the client is excused from the noncompliance as noted in “First Case Noncompliance Without Loss of Benefits” below.
- . For the second occurrence on the FIP case, close the FIP for 3 calendar months.

- . For the third and subsequent occurrence on the FIP case, close the FIP for 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. BEM 233A, pp. 6.

Good Cause Established

If the client establishes good cause within the negative action period, do **NOT** impose a penalty. See "Good Cause for Noncompliance" earlier in this item. Send the client back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. Do not enter a new referral on ASSIST. Enter the good cause reason on the DHS-71 and on the FSSP under the "Participation and Compliance" tab.

Good Cause NOT Established

If the client does NOT provide a good cause reason within the negative action period, determine good cause based on the best information available. If no good cause exists, allow the case to close. If good cause is determined to exist, delete the negative action. BEM 233A, pp. 10-11.

This Administrative Law Judge finds that the claimant was noncompliant with WF/JET program requirements by not submitting job search logs for the weeks of August 28, 2011, September 4, 2011, and September 30, 2011. The claimant was also noncompliant with WF/JET requirements by not attending her required class (Career 101) and by falsifying job search logs.

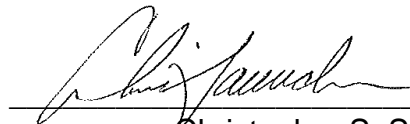
The claimant testified that she turned in several job logs or activity logs from September 30, 2011 to date but did not address the logs directly from the above-mentioned dates. The claimant further testified that she thought that she attended the class in question but could not provide any direct testimony as to specifics regarding that particular class. Furthermore, the claimant admitted that she logged job search activities for the week following the week she actually performed the activities. She stated that if her requirements were eight hours per week, she would perform ten hours in one week and use two of those hours to log on her sheet for the following week. The WF/JET representative testified that this was not an acceptable practice and that the claimant should have been aware of acceptable practices based on her acknowledgment of the WF/JET program requirements (see Department Exhibits J-2 and J-3). The claimant was not able to provide any evidence to refute the claim that her job logs from September 21, 2011 were falsified (see Department Exhibit J-8). This Administrative

Law Judge finds that the claimant did not present good cause for her noncompliance, and as such the department acted properly in accordance with policy in terminating and sanctioning the claimant's case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly terminated and sanctioned the claimant's Family Independence Program (FIP) benefits for noncompliance with WF/JET requirements.

Accordingly, the department's actions are AFFIRMED. SO ORDERED.



Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 12/13/11

Date Mailed: 12/13/11

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.

2012-9626/ CSS

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

CSS/hw

cc:

