

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201313205
Issue No: 1038, 3029
Case No: [REDACTED]
Hearing Date: January 9, 2013
Van Buren County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 by the Department of Human Services (department) on November 20, 2012. After due notice, a telephone hearing was held on January 9, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a family independence manager, and [REDACTED], a case manager, both with the department's Van Buren County office.

ISSUE

Whether the department properly closed and sanctioned Claimant's Family Independence Program (FIP) benefits and properly reduced Claimant's Family Assistance Program (FAP) benefits based on Claimant's 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. At all times relevant to this hearing, Claimant was a recipient of FIP benefits and, as a recipient of FIP benefits, Claimant was a mandatory WF/JET participant unless otherwise deferred from participation.
2. On May 12, 2012, Claimant signed a document titled "Work and/or Self-Sufficiency Rules for Cash Recipients" and, in doing so, acknowledged with her signature her understanding of the requirements of the JET program including, among other things, that there are penalties for not cooperating with work or family strengthening requirements, with such noncooperation including but not limited to quitting a job, or being fired. (Department Exhibit A)

3. On August 13, 2012, the state Medical Review Team issued a decision denying Claimant's disability claim and concluding that Claimant was able to work and participate in mandatory WF/JET participation requirements with some physical limitations related to lifting and carrying and related to standing and/or walking. (Department Exhibit B)
4. On September 1, 2012, the department mailed Claimant a Work Participation Program Notice (DHS-4785), notifying her of her required attendance at the Work Participation Program on September 17, 2012 at 9:00 a.m. The Notice further advised Claimant that her failure to attend the work participation program will result in the denial of benefits. The Notice further advised Claimant that if she was unable to keep this appointment, she must call and reschedule the appointment before the scheduled appointment date. (Department Exhibit C)
5. Claimant did not attend her Work Participation Program appointment on September 17, 2012. (Department Hearing Summary)
6. On September 25, 2012, the department mailed Claimant a Notice of Noncompliance (DHS 2444) and a Notice of Case Action for her failure to participate as required in employment and/or self-sufficiency related activities. The Notices indicated that, unless good cause was established, her FIP case would be closed and her FAP case would be reduced effective November 1, 2012 for a six month sanction as this was Claimant's second non-compliance. The Notice of Noncompliance also scheduled a triage appointment for Claimant on October 4, 2012 at 1:30 p.m. (Department Exhibits D, E, F, G)
7. Claimant attended the October 4, 2012 triage appointment by telephone and acknowledged that she did not attend the WF/JET program because she did not receive the Work Appointment Notice due to issues with her mail service delivery. (Department Exhibit H)
8. Effective November 1, 2012, Claimant's FIP case was closed and her FAP case was reduced and subject to a six-month sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibits E, I, J)
9. On November 19, 2012, Claimant submitted a hearing request protesting the closure of her FIP case and the reduction of her FAP benefits. (Request for Hearing)

CONCLUSIONS OF LAW

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 of that decision. BAM 600. 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).

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 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).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) 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). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. 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 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 Licensing and Regulatory Affairs (LARA) 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 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).
 - .. Provide legitimate documentation of work participation.
 - .. Appear for a scheduled appointment or meeting related to assigned activities.
 - .. 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.

According to BEM 233A, refusing suitable employment means doing **any** of the following:

- Voluntarily reducing hours or otherwise reducing earnings.
- Quitting a job,
- Firing for misconduct or absenteeism (not for incompetence).

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.

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.

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.

The penalty for noncompliance without good cause is FIP closure. Effective October 1, 2011, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for not less than three calendar months.
- . For the second occurrence on the FIP case, close the FIP for not less than six calendar months.

- . For the third and subsequent occurrence on the FIP case, close the FIP for a lifetime sanction. BEM 233A.

Department policy further indicates that the individual penalty counter begins April 1, 2007. BEM 233A. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

Department policy further indicates that a noncompliant group member will be sanctioned from the FAP group for the FIP noncompliance if they are not deferred from FAP work requirements. BEM 233B.

In this case, Claimant was required to participate in the JET/Work First program as a condition of receiving FIP benefits. On September 25, 2012, the department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, the department determined that Claimant had discontinued attending and participating in Work First without an excuse or deferral. And, because the department ultimately determined that Claimant did not provide good cause for her failure to attend the JET program during her triage appointment, the department closed Claimant's FIP case and imposed a six-month sanction as this was Claimant's second non-compliance.

At the January 9, 2013 hearing, Claimant testified that she did not attend her rescheduled Work Participation Appointment because she never received the Appointment Notice advising her of the new date to attend.

However, Claimant did receive the Notice of Noncompliance and the Notice of Case Action, both of which were mailed to Claimant at the same address. Moreover, the department did not have any information in Claimant's file indicating that the Work Participation Appointment was returned as undeliverable. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

Claimant's further testified that she has had an ongoing problem with her mail delivery service – however, this issue is not the responsibility of the department and therefore cannot be considered acceptable evidence to rebut the presumption that the department properly mailed and addressed the Work Participation Program Appointment Notice.

Testimony and other evidence must be weighed and considered according to its reasonableness. *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). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the hearing, Claimant has failed to show good cause for her failure to participate as required in employment and/or self-sufficiency related activities and the department properly closed and imposed a six-month sanction on Claimant's FIP case and properly reduced Claimant's FAP benefits due to Claimant's non-compliance with WF/JET requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed and imposed a six-month sanction on Claimant's FIP case and properly reduced Claimant's FAP benefits due to her non-compliance with WF/JET requirements. The department's actions are therefore **UPHELD**.

It is **SO ORDERED**.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 11, 2013

Date Mailed: January 14, 2013

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 this 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,

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- Typographical errors, mathematical errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
- The failure of the ALJ to address other relevant issues in the hearing decision.

A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/cr

cc:

