

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201317876
Issue No: 1038, 3029
Case No: [REDACTED]
Hearing Date: January 23, 2013
St. Clair 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 December 10, 2012. After due notice, a telephone hearing was held on January 23, 2013. Claimant appeared by three-way conference call and provided testimony. The department was represented by [REDACTED], a PATH coordinator.

ISSUE

Whether the department properly terminated 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.
2. On July 27, 2012, the state Medical Review Team issued an MRT Assessment for Jet Participation Project, concluding therein that Claimant was not disabled and therefore not deferred from mandatory WF/JET participation requirements. (Department Exhibit 1a)
3. On October 1, 2012, the state Medical Review Team determined that because additional medical documentation submitted by Claimant after

July 27, 2012 predated the MRT's July 27, 2012 decision, that decision would remain unchanged. (Department Exhibit 1b)

4. On October 8, 2012, the Department mailed Claimant a Quick Note advising her that, because the Medical Review Team denied her deferral, she must attend the JET program on either October 15, 2012 or October 22, 2012 or she may be disqualified from the FIP program and her FAP benefits may be reduced. (Department Exhibit 3a)
5. On October 8, 2012, the Department mailed Claimant two Work Participation Program Appointment Notices (DHS 4785), advising Claimant of her required attendance at her JET appointment on either October 15, 2012 or October 22, 2012 at 8:30 a.m. (Department Exhibits 4a, 4b)
6. Claimant attended neither the October 15, 2012 or the October 22, 2012 appointment.
7. On November 7, 2012, the Department mailed Claimant a Work Participation Program Appointment Notice (DHS 4785), advising Claimant of her required attendance at her JET appointment on November 13, 2012 at 8:30 a.m. (Department Exhibit 4c)
8. Claimant did not attend her November 13, 2012 appointment.
9. On November 13, 2012, the Department's St. Clair County PATH coordinator contacted Claimant, at which time Claimant agreed to attend the JET program on November 19, 2013 at 8:30 a.m. (Department Exhibit 5a)
10. Claimant did not attend her November 19, 2013 appointment. (Department Exhibit 2a)
11. On November 29, 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 effective January 1, 2013 for a three-month sanction and her FAP case would be reduced for a one-month period as this was Claimant's first non-compliance. The Notice scheduled a triage appointment for November 29, 2012 at 2:30 p.m. (Department Exhibits 6a, 7a)
12. Claimant attended the November 29, 2012 triage appointment by telephone, at which time the department concluded that Claimant did not establish good cause for her noncompliance because Claimant failed to

present any medical documentation excusing her from the WF/JET program. (Department Exhibit 2a)

13. Effective January 1, 2013, Claimant's FIP case was closed and subject to a three-month month sanction and her FAP case was closed for a one-month period for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibit 7a)
14. On December 7, 2012, Claimant submitted a hearing request protesting the department's closure of her FIP case and the reduction of her FAP benefits.

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 and 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 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.

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.

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that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A.

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.
- The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.
- 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.
- The client requested child care services from DHS, PATH, 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.
- The care is appropriate to the child's age, disabilities and other conditions.
- The total commuting time to and from work and the child care facility does not exceed three hours per day.
- The provider meets applicable state and local standards. 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.
- The child care is provided at the rate of payment or reimbursement offered by DHS.
- The client requested transportation services from DHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.
- The employment involves illegal activities.
- The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

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

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, following a July 27, 2012 decision by the Medical Review Team denying Claimant's disability claim, Claimant was required but failed to participate in the JET program. As a result, the department found that Claimant was noncompliant and, because the department ultimately determined that Claimant did not provide good cause for her failure to attend the JET program, the department closed Claimant's FIP case and imposed a three-month sanction on Claimant's receipt of FIP benefits and

reduced Claimant's FAP benefits for a one-month period, as this was Claimant's first noncompliance.

At the January 23, 2013 hearing, Claimant testified that she was and remains unable to participate in the Work First/JET program due to her ongoing medical condition. While this Administrative Law Judge does not doubt the truth and sincerity of Claimant's testimony, Claimant presented no current medical documentation to the department or to this Administrative Law Judge expressly stating that she is unable to work or attend the JET program due to her ongoing medical condition. To be sure, the medical documents that Claimant presented at the January 23, 2013 hearing consist of the results of MRIs that Claimant underwent in March 2012, April 2012 (before the MRT determination that Claimant is not disabled), and on December 6, 2012. However, these results contain no indication or statement from a physician that Claimant is unable to work or attend the JET program.

Accordingly, the Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to credibly 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 three-month sanction on Claimant's FIP case, and properly reduced Claimant's FAP benefits for a one-month period, for her 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 properly imposed a three-month sanction on Claimant's FIP case for her non-compliance with WF/JET requirements. The Administrative Law Judge further decides, based upon the above findings of fact and conclusions of law, that the department properly decreased Claimant's FAP benefits for a one-month period for 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 24, 2013

Date Mailed: January 28, 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,
 - 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:

