

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201321614
Issue No: 1038, 3008
Case No: [REDACTED]
Hearing Date: February 7, 2013
County: Kalamazoo

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 January 4, 2013. After due notice, a telephone hearing was held on February 7, 2013. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (JET Triage/Hearing Specialist) and [REDACTED] (P.A.T.H. Program Case Manager).

ISSUE

Whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits and properly reduced Claimant's Food Assistance Program (FAP) 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. Claimant was a FIP and FAP recipient and a mandatory WF/JET participant.
2. Claimant had a one year deferral as a caretaker for his spouse who had a disability. At the end of the year-long deferral, the Department required Claimant provide an update as to his wife's condition to determine whether the deferral should continue.
3. On November 14, 2012, the Department provided Claimant with a Medical Needs-JET form (DHS-54-E) to be completed by an MD/DO/FLP/PH.D regarding his spouse.

4. As of December 1, 2012, Claimant did not provide the Department with a DHS-54-E or any other documentation regarding his spouse's medical condition.
5. On December 1, 2012, the Department mailed Claimant a Work Participation Program Appointment Notice (DHS-4785) which scheduled Claimant to attend orientation on December 17, 2012
6. Claimant failed to attend orientation on December 1, 2012. The Department extended Claimant's obligation to attend orientation through December 23, 2012.
7. Claimant did not have any WF/JET approved reduced participation requirements at the time.
8. Claimant failed to attend required orientation by December 12, 2012.
9. On January 2, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because he failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for January 10, 2012 at 9:00a.m.
10. On January 10, 2012, Claimant attended Triage but did not provide any documentation regarding his spouse's condition and whether continued care was necessary. The Department found Claimant did not show good cause for her noncompliance.
11. The Department mailed Claimant a Notice of Case Action (DHS-1605) on December 31, 2012, which closed Claimant's FIP benefits for a lifetime effective February 1, 2013 and reduced Claimant's FAP to \$ [REDACTED] effective February 1, 2013.
12. Claimant submitted a hearing request on January 4, 2013 protesting the closure of his FIP benefits and reduction of his FAP benefits.
13. This is Claimant's third 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 instant matter concerns two programs: FIP and FAP. 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).

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, et seq., and 1997 AACS R 400.3001-3015.

For purposes of FIP, 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.

Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. 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. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. 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. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. 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. A client may disclose a disability at any time. 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 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.

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. Unless otherwise deferred, they must be referred 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.

Participants with a disability may be deferred if he or she is a recipient of RSDI based on disability or blindness or is found eligible for RSDI based on disability or blindness who is in non-pay status. BEM 230A.

A person with short-term incapacity may be deferred for up to 3 (three) months. BEM 230A. A person with a short-term incapacity is a person with a mental or physical illness, limitation, or incapacity expected to last less than 3 (three) months which prevents participation. BEM 230A. The Department will verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - Work Participation Program, or other written statement from an M.D./D.O. BEM 230A. Then, the Department shall set the medical review date accordingly, but not to exceed three months. BEM 230A. BEM 230A. specifically prohibits the Department from advising with a short-term incapacity to apply for SSI. BEM 230A.

Ineligible caretakers are not recipients of FIP, although the family is receiving FIP benefits for the children. BEM 233A. They are not WEIs and are not referred to the work participation program but must complete a FAST and develop an FSSP for the family to reach self-sufficiency. BEM 233A. Failure to complete the FAST or FSSP by the due date may result in case closure for failure to provide the department with needed information. BEM 233A and BEM 233C do not apply.

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.

A FIP 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.¹ BEM 233A.

Noncompliance by a WEI while the application is pending results in group ineligibility. BEM 233A. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending, must have benefits delayed. BEM 233A. If a WEI applicant refuses suitable employment without good cause while the FIP application is pending (or up to 30 days before the FIP application date), approve FIP benefits no earlier than the pay period following the pay period containing the 30th day after the refusal of employment. A non-WEI who does not complete the FAST within 30 days and the application is still pending is denied FIP. A good cause determination is not required for applicants who are noncompliant prior to FIP case opening. If a WEI member add refuses suitable employment without good cause while the FIP member add is pending, close the FIP EDG for the minimum number of penalty months. BEM 233A.

Noncompliance for FIP purposes 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-FIP 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.

FIP 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.

For FIP, 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.

¹ 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.

Good cause for FIP purposes 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. 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); (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.

The FIP sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. BEM 233B. BEM 233B apply to all FAP applicants and recipients age 16 and over. Noncompliance without good cause, with employment requirements for FIP/RCA² may affect FAP if both programs were active on the date of the FIP noncompliance. See BEM 233A and BEM 233B.

Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following two situations: (1) client is active FIP/RCA and FAP and becomes noncompliant with a cash program requirement without good cause; and (2) client is pending or active FAP only and refuses employment (voluntarily quits a job or voluntarily reduces hours of employment) without good cause. At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP. BEM 233B.

The Department will disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.

² Refugee Cash Assistance program.

- The client is subject to a penalty on the FIP/RCA program.
- The client is not deferred from FAP work requirements; see DEFERRALS in BEM 230B.
- The client did not have good cause for the noncompliance. BEM 233B.

Non-deferred adult members of FAP households must follow certain work-related requirements in order to receive FAP benefits. BEM 233B.

A noncompliant person must serve a minimum one-month or six-month disqualification period unless one of the criteria for ending a disqualification early exists. BEM 233B. The Department will end the disqualification early if the noncompliant person either: (1) complies with work assignments for a cash program; (2) obtains comparable employment in salary **or** hours to the job which was lost; (3) meets a deferral reason other than unemployment benefit (UB) application/recipient; see DEFERRALS in BEM 230B; or leaves the group. BEM 233B.

Here, Claimant has failed to attend orientation which serves as the Department's reason for finding noncompliance. Claimant contends that he had a deferral to provide care for his disabled spouse and that his deferral should continue. The record reveals that on June 6, 2012, Claimant provided the Department with a Medical Needs (DHS-54-A) form dated April 18, 2011 which indicated that Claimant's spouse ([REDACTED] [REDACTED] [REDACTED]) is disabled but does not need a spouse in the home to provide care. However, Claimant was required to provide the Department with documentation to show that Claimant's spouse required continued care in order for the deferral to continue through 2012 and 2013. Claimant has failed to do so despite having numerous opportunities.

Specifically, Claimant was required by policy to provide documentation from a doctor who could verify in writing or by using a DHS- 54A, Medical Needs, form or DHS-54E, Medical Needs-Work Participation Program that (1) his spouse with a disability requires a caretaker due to the extent of the disability; (2) Claimant is needed in the home to provide care; and (3) Claimant cannot engage in an employment-related activity due to the extent of care required. BEM 233A. Claimant had failed to provide this documentation at any time. Even during the hearing, Claimant did not have it. Per BEM 233A, the Department is not required to continue the deferral any longer absent this documentation.

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 attend orientation. As a result of Claimant's noncompliance without good cause, the Department properly closed Claimant's FIP case for non-compliance and properly reduced Claimant's FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly reduced Claimant's FAP benefits and properly closed Claimant's FIP case for noncompliance with WF/JET requirements and the lifetime FIP sanction is **AFFIRMED**.

IT IS SO ORDERED.

/s/_____

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

Date Signed: February 13, 2013

Date Mailed: February 13, 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 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

2013-21614/CAP

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:

