

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201325247
Issue No: 1038
Case No: [REDACTED]
Hearing Date: February 21, 2013
County: Genesee 06

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 16, 2013. After due notice, a telephone hearing was held on February 21, 2013. Participants on behalf of Claimant included [REDACTED] [REDACTED] (Claimant) and [REDACTED] [REDACTED] (Claimant's fiancé). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] etto (Assistance Payments Supervisor).

ISSUE

Whether the Department properly denied Claimant's application for 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. Claimant applied for FIP on November 26, 2012.
2. Claimant's fiancé ([REDACTED]) was an adult group member at all times.
3. On December 3, 2012, the Department mailed Claimant a Work Participation Appointment Notice (DHS-4785), which scheduled [REDACTED] to attend orientation on December 19, 2012 at 9:00 a.m.
4. Claimant and [REDACTED] attended JET orientation on December 19, 2012 and was provided with 4 (four) one-punch bus passes.

5. On December 20, 2012, Claimant and [REDACTED] attended JET orientation again. Claimant and [REDACTED] were required to attend JET the following day.
6. On December 21, 2012 at 7:00a.m., [REDACTED] called the WF/JET office and left a voicemail message indicating that he and his fiancé took the wrong bus and would like to reschedule the next appointment which was at 8:00 a.m.
7. The Department mailed Claimant a Notice of Case Action (DHS-1605) on January 9, 2013, denying Claimant's FIP application because she and/or [REDACTED] failed to attend JET and remain in compliance with JET activities before the opening of the FIP case.
8. Claimant submitted a hearing request on January 16, 2013, protesting the denial of the FIP application.

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 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 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. 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.

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 referral¹; (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 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.²

At application, the Department is required to use the Bridges DHS-1538, Work and Self-Sufficiency Rules, to explain all of the following to clients at FIP application for each episode of assistance: (1) direct support services opportunities, including transportation and child care required to attend orientation; (2) work requirements and reasons why a person may be deferred from the work participation program and work requirements; (3) self-sufficiency requirements; (4) penalties for non-compliance, the triage and hearing processes and good cause; (5) earnings or activity reporting and verification requirements, including the semi-annual reporting requirement for families with earnings; (6) domestic violence; (7) FIP is limited to a 48 month lifetime limit per individual (See BEM 234, FIP Time Limit); and (8) prohibited use of FIP for gambling, massage parlors, spas, tattoo shops, bail-bond agencies, adult entertainment, cruise

¹ 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.

² 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.

ships, other nonessential items or to purchase lottery tickets, alcohol, or tobacco. BEM 229.

At application, the Department is required to ensure the client understands his/her responsibility to participate in employment-related activities including, but not limited to, calling before they are unable to attend a meeting or appointment and before they become noncompliant. See BEM 229. The Department shall also coordinate with the client an agreed upon date for attendance at orientation. This will eliminate the need for multiple assignment dates or appointment changes. BEM 229.

The DHS-1538 must be reviewed and signed by all of the following applicants and member adds: (1) adult members; (2) minor parent grantees; (3) deferred and potentially deferred adults; and (4) ineligible grantees. BEM 229. Policy requires the Department file the original signed copy of the DHS-1538, Work and Self-Sufficiency Rules, in the case record and give a photocopy to the client at the in-person interview or mail the client a copy following a phone interview. BEM 229.

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. BEM 229. Bridges automatically denies FIP benefits for noncompliance while the application is pending. BEM 229.

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

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 Jobs, Education and Training (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.³ 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. BEM 233A. 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.

In this matter, the Department denied Claimant's FIP application because either Claimant or her fiancé (██████████) failed to attend JET orientation at 8:00 a.m. on December 21, 2012. Mr. Buehler testified that he called Michigan Works! at 7:00a.m. before the required appointment on December 21, 2012 and left a voicemail message indicating that they could not make it. As indicated above, BEM 229 requires the Department, at application, "to ensure the client understands his/her responsibility to participate in employment-related activities including, but not limited to, **calling before they are unable to attend a meeting or appointment and before they become noncompliant.**" This Administrative Law Judge finds that ██████████ testimony that he called Michigan Works! prior to the appointment indicating that he and Claimant had taken the wrong bus and would not be able to make the appointment to be credible. In addition, the Department did not provide any witnesses to challenge ██████████ testimony. There is no evidence that the voicemail messages were returned. Moreover, the Department's reliance upon the MIS notes is insufficient to refute ██████████ testimony.

In addition, the Department representatives who attended the hearing were unable to clearly articulate whether Claimant or ██████████ was noncompliant. The MIS notes were ambiguous and did not provide any clarification in this regard.

This Administrative Law Judge finds that either Claimant or ██████████ acted appropriately by calling Michigan Works! prior to the December 21, 2012 appointment

³ 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.

indicating they would not be able to attend. Under the circumstances, both Claimant and [REDACTED] acted appropriately and complied with BEM 229 during the pendency of their FIP application. Rather than deny the FIP application, the Department should have rescheduled the WF/JET appointment. Good cause was shown in this circumstance. But even if good cause is not present, Claimant and [REDACTED] complied with BEM 229.

Therefore, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has shown good cause for failing to complete the attendance requirement on December 21, 2012. As a result, the Department did not properly deny Claimant's FIP application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did not properly deny Claimant's FIP application due to noncompliance with WF/JET requirements before the FIP case was opened. Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

- The Department shall initiate a reprocessing of Claimant's November 26, 2012 FIP application.
- The Department shall initiate a reengagement of Claimant and Mr. Buehler with the WF/JET program.
- The Department shall, to the extent required by policy, provide Claimant with retroactive and/or supplemental FIP benefits back to the date of closure

IT IS SO ORDERED.

/s/_____

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

Date Signed: February 25, 2013

Date Mailed: February 25, 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

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:

