

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

IN THE MATTER OF:



Reg. No: 201326772
Issue No: 1038
Case No: [REDACTED]
Hearing Date: February 27, 2013
Gladwin 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 January 23, 2013. After due notice, a telephone hearing was held on February 27, 2013. Claimant appeared and provided testimony, as did Claimant's witness, [REDACTED], who provided testimony on Claimant's behalf. The department was represented by [REDACTED], a case manager with the department's Gladwin County office, and [REDACTED], a lead support specialist with the department's Office of Child Support.

ISSUE

Whether the department properly closed and sanctioned Claimant's Family Independence Program (FIP) 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. (Department Exhibit 1)
2. On April 24, 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 quitting or being fired from a job) and that it is her responsibility to report any disability or health problem or

other barrier that required accommodation for her participation in the program. (Department Exhibit 35)

3. On October 15, 2012, the department received verification that Claimant was on maternity leave from her employment with [REDACTED] following the September 14, 2012 birth of her daughter. (Department Exhibits 3, 4)
4. On October 25, 2012, Claimant reported to the department that it was her intention to return to work on November 4, 2012, provided she is medically able to do so. (Department Exhibit 5)
5. On December 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 December 17, 2012 at 10:00 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 6)
6. On December 6, 2012, Heidi Gray reported to the department on behalf of Claimant that Claimant has been and remained hospitalized with a diagnosis of multiple sclerosis. [REDACTED] further reported that Claimant and Claimant's daughter would be staying with [REDACTED] at her home at [REDACTED]. (Department Exhibit 7)
7. On December 6, 2012, Claimant reported to the department that had been and remained hospitalized with a diagnosis of multiple sclerosis and did not know when she would be able to return to work. (Department Exhibit 8)
8. On December 6, 2012, Claimant faxed the department her signed authorization to allow [REDACTED] discuss her case and receive any information regarding her case until further notice. (Department Exhibit 9)
9. On December 6, 2012, the department mailed Claimant a Medical Determination Verification Checklist, JET Medical Needs form (DHS-54E) and a Verification Checklist (DHS -3503), requiring Claimant to have her physician complete and return the Medical Needs form by December 17, 2012 in order that the department may determine her eligibility for deferral from the JET program. The department mailed these documents to Claimant at the address of [REDACTED]. (Department Exhibits 10-12)

10. On December 13, 2012, the department received verification from Ace Hardware that Claimant had quit her employment with [REDACTED]. (Department Exhibits 13, 17)
11. Claimant did not provide the department with the requested medical verifications by the December 17, 2012 deadline. (Department Exhibit 28)
12. On December 20, 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 – specifically, for Claimant having quit her employment. The Notices indicated that, unless good cause was established, her FIP case would be closed effective February 1, 2013 for a three-month sanction as this was Claimant’s first non-compliance. The Notice scheduled a triage appointment for December 26, 2012 at 9:00 a.m.. Both Notices were mailed to Claimant at [REDACTED]. (Department Exhibits 21-26)
13. Claimant neither attended nor called in advance to reschedule her December 26, 2012 triage appointment, 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 28)
14. Effective February 1, 2013, Claimant’s FIP case was closed and subject to a three-month month sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibits 21, 29, 30)
15. On January 16, 2013, Claimant submitted a hearing request protesting the department’s closure of her FIP case.¹
16. On February 22, 2013, Claimant submitted to the department a Medical Needs-JET form completed by Claimant’s physician on that same date. Therein, Claimant’s physician indicated that was unable to work at her usual occupation or at any job due to her multiple sclerosis diagnosis and that her physical limitations were expected to last more than 90 days. (Department Exhibit 36)

¹ While Claimant’s FIP case also closed due to her having gone into noncompliance with child support requirements on December 11, 2012, Claimant returned to compliance with these requirements on January 29, 2013 and Claimant testified at the February 27, 2013 hearing that she does not dispute the department’s closure on this basis.

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).

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.

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, Claimant was required to participate in the JET/Work First program as a condition of receiving FIP benefits. On December 20, 2012, the department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, her having quit her employment. And, because Claimant did not attend her December 26, 2012 triage appointment or otherwise provide the department with the required verification of her medical condition before the triage appointment or before the expected February 1, 2013 closure of her FIP case, the department closed Claimant's FIP case effective February 1, 2013 for a three-month sanction.

At the February 27, 2013 hearing, Claimant testified that she did not quit her employment but, rather, was unable to return to work following the birth of her daughter due to complications related to her subsequent diagnosis of multiple sclerosis, which complications required her hospitalization from November 27, 2012 through January 4, 2013. Claimant further testified that, because of her hospitalization, which she informed the department of on December 6, 2012, as well as a subsequent address change in December 2012 ([REDACTED]), she never received the medical verification documentation that the department mailed to her on December 6, 2012 at the address of [REDACTED]. Claimant further testified that it was only after the closure of her FIP case that she learned of the required submittal of medical verifications, which she subsequently obtained from the department on February 7, 2013 and returned to the department on February 22, 2013.

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 persuasive the fact that the department received credible information from both Heidi Gray and Claimant on December 5, 2012 and December 6, 2012, respectively, that Claimant had been and remained hospitalized – which, according to BEM 233A, is considered an unplanned event or factor constituting

good cause for a client's noncompliance with employment and/or self-sufficiency activities. This Administrative Law Judge further finds persuasive the fact that the department mailed Claimant the required medical verification documentation to her address at [REDACTED] after learning on December 5, 2012 that Claimant remained hospitalized and, following her discharge, would be staying with [REDACTED] – and whose authorization to “get any information in regards to [Claimant's] case” was signed by Claimant and submitted to the department on December 6, 2013. It is therefore understandable that Claimant did not receive the requested medical verification documentation in order to return it to the department by the required deadline. Accordingly, this Administrative Law Judge finds that, based on the competent, material, and substantial evidence presented during the hearing, the department has failed to meet its burden to show that Claimant was noncompliant without good cause with WF/JET requirements. As the department has failed to show Claimant was noncompliant without good cause, the department improperly closed and improperly imposed a three-month sanction on Claimant's FIP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly closed and improperly imposed a three-month sanction on Claimant's FIP case for her non-compliance with WF/JET requirements. The department's actions are therefore **REVERSED** and the department is ordered to immediately reinstate Claimant's FIP benefits for the benefit period effective February 1, 2013; (ii) remove the sanction from Claimant's penalty counter; and (iii) issue Claimant any retroactive FIP benefits to which she is entitled.

It is **SO ORDERED**.

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

Date Signed: March 1, 2013

Date Mailed: March 4, 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:

