

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-28504
Issue No: 1038
Case No: [REDACTED]
Hearing Date: March 26, 2013
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's Request for a Hearing was received on February 1, 2013. After due notice, a telephone hearing was held on Tuesday, March 26, 2013. The claimant personally appeared and testified on her own behalf. The department was represented by [REDACTED], FIS, [REDACTED] JET Coordinator, and [REDACTED], FIM.

ISSUE

Whether the Department of Human Services (Department) properly sanctioned the Claimant's Family Independence Program (FIP) case for noncompliance with the Jobs, Education, and Training (JET) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant was a recipient of FIP benefits, which required her to participate in the JET program.
2. On January 9, 2013, the claimant was sent a PATH Appointment Notice to attend on January 22, 2013. Department Exhibit 5.
3. On January 28, 2013, the claimant was being triaged because she failed to attend JET orientation.
4. On January 28, 2013, the claimant was sent a Notice on Noncompliance (DHS-2444) requesting a triage meeting on February 7, 2013. Department Exhibit 3-4.

5. The Department conducted a triage meeting on February 7, 2013 where the determination was made that the claimant did not have good cause for not complying with the JET requirements. Department Exhibit 9.
6. On January 28, 2013, the Department notified the Claimant that it would close the claimant's FIP benefits as of February 1, 2013. Department Exhibit 6-7.
7. The Department received the Claimant's request for a hearing on February 1, 2013, protesting the closing of the claimant's FIP benefits.
8. During the hearing, the claimant testified that she had to give 2 weeks notice when she needs a day off.

CONCLUSIONS OF LAW

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 (RTM), 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 DHS when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments will be 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 Labor and Economic Growth (DLEG) 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.

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:

NONCOMPLIANCE PENALTIES FOR ACTIVE FIP INDIVIDUALS AND MEMBER ADDS

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

For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.

For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.

For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction. BEM, Item 233A.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

Noncompliance, without good cause, with employment requirements for FIP/RAP(SEE BEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233b. The FAP group member should be disqualified for noncompliance when all the following exist:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP/RAP employment requirements, and
- The client is subject to a penalty on the FIP/RAP program, and
- The client is not deferred from FAP work requirements, and
- The client did not have good cause for the noncompliance. BEM 233B.

The Department should budget the Last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the 1st noncompliance, 6 months for 2nd noncompliance, and a lifetime for the third noncompliance) after the FIP case closes for employment and/or self sufficiency-related noncompliance. The Last FIP grant amount is the grant amount the client received immediately before the FIP case closed.

The Claimant was an ongoing Family Independence Program (FIP) recipient. The Department had referred the claimant to the JET program as a condition of receiving FIP benefits. The Claimant was noncompliant with the JET program on January 28, 2013 because she failed to stay at PATH because she had to go to work. The Department conducted a triage meeting on February 7, 2013 and it was determined that the claimant did not have good cause for noncompliance with the JET program.

Based on the evidence and testimony available during the hearing, the Department's determination that the Claimant did not have good cause for JET noncompliance with the JET program is not reasonable. The claimant is working 20 hours per week, which does not meet the requirement for JET of 40 hours. She is required to participate the additional 20 hours with JET. However, the JET program should accommodate her work schedule. The Department has not established that it acted properly when it closed the Claimant's FIP benefits for noncompliance with the JET program. The department should have gotten verification from the claimant that she indeed had to work on that day and rescheduled her orientation. The claimant testified credibly that she has to give 2 weeks notice before she can get the day off to attend orientation.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did not act in accordance with policy when it sanctioned the Claimant's FIP case for noncompliance with the JET program. The FIP sanctioned should be removed and the claimant should be re-referred back to PATH for

orientation with at 3 weeks advance notice so that the claimant could request the day off within the two weeks that is required by her employment.

The Department's FIP sanction is **REVERSED**.

/s/

Carmen G. Fahie
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 5, 2013

Date Mailed: April 5, 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. (60 days for FAP cases).

The Claimant may appeal the 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 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 to:

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

CGF/hj

cc:

