

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201329216
Issue No: 1038, 3008
Case No: [REDACTED]
Hearing Date: March 14, 2013
County: Grand Traverse

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 February 5, 2013. After due notice, a telephone hearing was held on March 14, 2013. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Family Independence Specialist), [REDACTED] (JET Career Advisor) and [REDACTED] (JET/PATH Career Advisor).

ISSUE

Whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits and reduced his 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 active for FIP and FAP and was a mandatory WF/JET participant.
2. On January 8, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because he allegedly failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for January 17, 2013 at 10:00a.m.
3. On January 17, 2013, Claimant attended Triage and stated that he was disabled and that he did not understand how to complete the job search

activity reports. The Department found Claimant did not show good cause for his noncompliance.

4. The Department mailed Claimant a Notice of Case Action (DHS-1605) on January 8, 2013, which closed Claimant's FIP benefits and reduced his FAP benefits effective February 1, 2013.
5. Claimant submitted a hearing request on February 4, 2013 protesting the closure of his FIP case and the reduction of his FAP benefits.

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).

FIP provides financial assistance to families with children. BEM 100. The goal of FIP is to help maintain and strengthen family life for children and the parent(s) or other caretaker(s) with whom they are living, and to help the family attain or retain capability for maximum self support and personal independence. BEM 100. Several nonfinancial and financial eligibility factors must be met for a family to be eligible for FIP. BEM 100.

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.

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 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 or 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. BEM 229. The Department shall also coordinate with the client an agreed upon date for attendance at orientation. BEM 229. 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.

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

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. BEM 230A. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A.

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. BEM 230A. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A. 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. BEM 230A. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A. 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. BEM 230A. A client may disclose a disability at any time. BEM 230A. 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. 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.

All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. BEM 230A. WEIs who are temporarily deferred are required to participate in activities that will help them overcome barriers and prepare them for employment or referral to an employment service provider. BEM 230A. **If the WEI refuses or fails to provide verification of a deferral when required, the Department will refer him or her to the work participation program. BEM 230A.** The Department must notify the work participation program service provider immediately by phone or email when a client who was previously referred is granted a temporary deferral. 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.

A person with long-term incapacity, or disability, may be deferred. BEM 230A. At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or the work

participation program for more than 90 days because of a mental or physical condition, the client should be deferred. BEM 230A. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A. This may include those who have applied for RSDI/SSI. 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 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.

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), the Department will 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, the Department should close the FIP EDG for the minimum number of penalty months. BEM 233A.

“Refusing suitable employment” means doing any of the following: (1) voluntarily reducing hours or otherwise reducing earnings; (2) **quitting a job except if the work participation program verifies the client changed jobs or reduced hours in order to participate in a work participation program approved education and training program**; (3) **firing for misconduct or absenteeism (not for incompetence)**²; (4) refusing a bona fide offer of employment³ or additional hours up to 40 hours per week.

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.

² Misconduct sufficient to warrant firing includes **any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer’s interest**, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual’s work. BEM 233A.

³ A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent. BEM 233A.

BEM 233A. Exception: Meeting participation requirements is not good cause for refusing suitable employment, unless the employment would interfere with approved education and training. BEM 233A. An applicant or member add who refused employment more than 30 days prior to the date of application or date of member add may not be penalized. BEM 233A.

Noncompliance 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 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.

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.

The Department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within 3 (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. BEM 233A. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A. 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. BEM 233A. Good cause may be verified by information already on file with DHS or MWA. BEM 233A. 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: (1) **working full-time at minimum wage** - the person is working at least 40 hours per week on average and earning at least state minimum wage; (2) **physically/mentally unfit** - the client is physically or mentally unfit

for the job or activity, as shown by medical evidence or other reliable information⁴; (3) **illness/injury** - the client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client; (4) **failure to accommodate** - 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; (5) **child care not provided** - the client requested child care services from DHS, the work participation program, 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; (6) **special child care** - the care is appropriate to the child's age, disabilities and other conditions; (7) **commuting time** - the total commuting time to and from work and the child care facility does not exceed 3 (three) hours per day; (8) **appropriate child care** - the provider meets applicable state and local standards⁵; (9) the child care is provided at the rate of payment or reimbursement offered by DHS; (10) **transportation not provided** - the client requested transportation services from DHS, the work participation program, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client; (11) **illegal** - the employment involves illegal activities; (12) **discrimination** - the client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs; (13) **unplanned event** - credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities⁶; (14) **new employment** - the client quits to assume employment comparable in salary and hours (the new hiring must occur before the quit); (15) **total commuting time** - total commuting time exceeds 2 (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. 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 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,

⁴ 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. BEM 233A.

⁵ 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.

⁶ Unplanned events or factors include, but are not limited to, the following: (1) domestic violence; (2) health or safety risk; (3) religion; (4) homelessness; (5) jail and (6) hospitalization. BEM 233A.

including those with a member add who is a WEI work participation program participant. BEM 233A.

For FAP purposes, the Department requires participation in employment and/or self-sufficiency related activities associated with FIP or the Refugee Cash Assistance (RCA). BEM 233B. Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. BEM 233B. There are consequences for a client who refuses to participate in FIP/RCA employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause. BEM 233B.

Noncompliance without good cause, with employment requirements for FIP/RCA may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B. Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following situations: (1) the client is active FIP/RCA and FAP and becomes noncompliant with a cash program requirement without good cause; (2) the client is active RCA and becomes noncompliant with a RCA program requirement; or (3) the client is pending or active FAP only and refuses employment (voluntarily quits a job or voluntarily reduces hours of employment) without good cause. BEM 233B.

Here, the Department contends that Claimant was non-compliant with the WF/JET program because he, without good cause, (1) refused suitable employment or quit a job and (2) failed to properly complete his job search activity reports. According to the Department, Claimant, on November 14, 2012, voluntarily signed a DHS-1538 where he agreed to participate in the JET program. The Department also argues that Claimant denied that he had a disability which would affect his ability to participate in the JET program. Then, the Department contends, Claimant voluntarily accepted employment at the Holiday Inn, but then quit or was terminated without good cause in early December, 2012. The Department also claims that Claimant submitted incomplete or inaccurate job activity reports.

Claimant, on the other hand, has a different account. Claimant states that he has severe back problems, disc disease and arthritis which either prevents his JET participation or, at least, requires some accommodations. Claimant says that initially reported a disability in November, 2012 but was never offered an opportunity to prove his disability. (The Department conceded that Claimant's initial caseworker failed to offer Claimant any forms to be filled out by his medical providers. However, the Department later discovered the omission and offered Claimant an opportunity to complete medical forms to establish a disability or to obtain a deferral and Claimant refused.) Claimant admits that he elected not to pursue a disability the second time because the Department told him that the process was so lengthy and cumbersome that it was not worth his time. Claimant then accepted a position at Holiday Inn but was apparently fired after he told the manager that he could only work certain hours and could not work weekends. With regard to the job search forms, Claimant simply stated that he did not understand how to properly complete the forms.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge finds that the Department's version of events is more credible than Claimant's. If Claimant sincerely had a disability that prevented his employment, he would not have volunteered to work at Holiday Inn due to a physical or mental incapability. Obviously, Claimant knew he was capable of employment at that time. This Administrative Law Judge does not believe that Claimant was coerced or tricked into accepting employment rather than pursuing the possible disability or deferral.

The Administrative Law Judge also finds that Claimant was noncompliant with JET because he refused suitable employment because he either quit or was terminated from Holiday Inn. Even if Claimant did not quit, it was his actions that caused the Holiday Inn to terminate him. (Claimant also testified that he was removed from the building and that Claimant refused to attend a meeting to discuss the circumstances surrounding his departure from Holiday Inn). In addition, this Administrative Law Judge has reviewed Claimant's job activity reports in the record and finds that he failed to properly complete the reports. Claimant's argument that he did not understand how to fill them out is not credible. The forms are basic and straightforward. Claimant did not indicate that he had any learning disabilities or had any other related deficiencies.

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 properly participate in required employment related activities and for failing to properly complete his job search activity reports. This is Claimant's first noncompliance with the JET program. As a result, the Department properly closed Claimant's FIP case and properly reduced his FAP benefits based on his non-compliance.

Because Claimant's instant hearing request was submitted on February 4, 2013 and concerns only the Notice of Case Action dated January 8, 2013, this Administrative Law Judge does not have jurisdiction over subsequent events including the January 25, 2013 application or the February 6, 2013 Notice of Case Action.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly closed Claimant's FIP case and properly reduced his FAP benefits for noncompliance with WF/JET requirements and the 3 (three) month FIP sanction **AFFIRMED**.

IT IS SO ORDERED.

/s/_____

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

Date Signed: March 22, 2013

Date Mailed: March 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

2013-29216/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:

