

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

IN THE MATTER OF:



Reg. No.: 20139909
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: January 16, 2013
County: Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on January 16, 2013. Claimant appeared and was represented by Attorney [REDACTED]. It is noted that the record was left open in order to allow Attorney [REDACTED] the opportunity to submit written arguments on behalf of his client. At this time no additional information has been received. In order to meet statutory time requirement this decision must be sent out today.

ISSUE

Did the Department properly sanction Claimant's Family Independence Program (FIP) for failure to participate in employment and/or self-sufficiency related activities?

FINDINGS OF FACT

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

- (1) On June 15, 2012, Claimant applied for Family Independence Program (FIP) benefits. On the application Claimant stated she could not participate in the Michigan Works Agency/Jobs Education and Training Program (JET) because of her disability.
- (2) On August 1, 2012, Claimant's Family Independence Program (FIP) application was approved and she began receiving Family Independence Program (FIP) benefits.

- (3) On August 8, 2012, Claimant's medical documentation was sent to the Medical Review Team for evaluation of her ability to participate in the Michigan Works Agency/Jobs Education and Training Program (JET).
- (4) On August 18, 2012, the Medical Review Team requested that Claimant's scheduled DDS/SSA examination report be obtained and sent for inclusion in their determination.
- (5) On September 11, 2012, the DDS/SSA examination report was sent to the Medical Review Team.
- (6) On September 21, 2012, the Medical Review Team determined that Claimant would not be deferred from JET participation because she was work ready with limitations.
- (7) On October 1, 2012, Claimant was sent a Work First/Jobs Education and Training Appointment Notice (DHS-4785 form). The notice stated that Claimant was required to attend the Work First/Jobs Education and Training Program on October 15, 2012.
- (8) On October 4, 2012, Claimant's start date for JET was set back to October 22, 2012.
- (9) On October 22, 2012, Claimant did not attend JET.
- (10) On October 25, 2012, Claimant was sent a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting for October 23, 2012. Claimant was also sent a Notice of Case Action (DHS-1605) stating that her Family Independence Program (FIP) would be sanctioned.
- (11) On October 23, 2012, Claimant attended the scheduled meeting. The Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.
- (12) On November 1, 2012, Claimant submitted a request for hearing.

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, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BEM 230A EMPLOYMENT AND/OR SELF-SUFFICIENCY RELATED ACTIVITIES: FIP

DEPARTMENT PHILOSOPHY

The Family Independence Program (FIP) is temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency related activities so they can become self-supporting.

DEPARTMENT POLICY

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in the Michigan Works Agency/Jobs Education and Training Program (JET) or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements.

MANDATORY PARTICIPANTS DELAYED REFERRAL (DEFERRED) TO EMPLOYMENT SERVICES

WEIs meeting one of the following criteria are only temporarily not referred to an employment service provider because they may continue to count in Michigan's federal work participation rate. They are required to participate in activities that will increase their full potential, help them overcome barriers and prepare them for employment or referral to an employment services provider as soon as possible. Enter the specialist assigned activities into the FSSP to track participation of temporarily deferred WEIs; see BEM 228.

If the WEI refuses or fails to provide verification of a deferral when required, refer him/her to JET.

Notify JET service provider immediately by phone or email when a client who was previously referred is granted a temporary deferral. Information entered in Bridges data collection will create the following participation/deferral reasons.

Long-Term Incapacity

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

Determination of a long-term disability is a three step process. The client must fully cooperate with both steps.

Step One: Establishment of Disability

Once a client claims a disability he/she must provide DHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in JET as a mandatory participant; see Verification Sources in this item.

In Bridges, the Deferral/Participation Reason is Establishing Incapacity while awaiting the verification that indicates the disability will last longer than 90 days.

If the returned verification indicates that the disability will last 90 days or less; see Short-Term Incapacity in this item.

Step Two: Defining the Disability

For verified disabilities over 90 days, the specialist must submit a completed medical packet and obtain a Medical Review Team (MRT) decision. The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence.

In Bridges, the Deferral/Participation Reason is *Establishing Incapacity* while awaiting the MRT decision.

Step Three: Referral to MRT

As a part of the MRT referral, the following should occur:

- Deferral/Participation Reason in Bridges remains *Establishing Incapacity*.
- Request a utilization report from central office; see Requesting a Utilization Report in this item.
- Have the recipient sign a DHS-1555-E, Release of Information.
- On the DHS-49-A, Medical-Social Eligibility Certification, under program, check JET.
- Complete the DHS-49-A-E, Medical Assessment For JET, and attach to the top of the medical packet.
- When a recipient claims he/she is visually impaired, require the recipient to provide verification from an ophthalmologist or optometrist; a DHS-49-I, Eye Examination Report, may also be used.

- Submit all required medical documentation to the MRT; see BAM 815, Medical Determination and Obtaining Medical Evidence.
- Manually set a reminder in Bridges for a three-month follow up.

Some conditions may be verified by other test results or evaluations, such as school, therapist, or other professional records.

MRT DECISION

Upon the receipt of the MRT decision, review the determination and information provided by MRT. Establish the accommodations the recipient needs to participate in JET or to complete self sufficiency-related activities. Follow the procedure for accommodating disabilities; see Reasonable Accommodation in this item.

Work Ready

Recipients determined by MRT to be work ready are able to fully engage in JET without any accommodation. To engage the recipient in JET, end the Disability Details record in Bridges. On the CASHEDG Summary, the Deferral/Participation Reason will be MWA Activity or JET and Bridges will generate a referral to JET as well as the DHS-4785.

Work Ready With Limitations

Recipients determined as work ready with limitations are required to participate in JET as defined by MRT. To engage the recipient in JET, take the following actions:

- End the Disability Details record in Bridges.
- Update the Disability Determination-MRT and Employment Services-Details screens in Bridges to indicate the recipient is work ready with limitations.
- On the Employment Services- Detail screen, use the Other MWA Referral Comments to identify the recipient's limitations as defined by MRT.
- On the CASH-EDG Summary the Deferral/Participation Reason will be *Work Ready with Limitations*.
- Bridges will generate a referral to JET as well as the DHS-4785 once the specialist runs and certifies eligibility.

Do not require the recipient to apply for RSDI/SSI.

NONCOMPLIANCE

When a client determined by MRT to be work ready with limitations becomes noncompliant with JET or his/her FSSP assigned activities, follow instructions outlined in BEM 233A.

BEM 233A FAILURE TO MEET EMPLOYMENT AND/OR SELF-SUFFICIENCY RELATED REQUIREMENTS: FIP

DEPARTMENT PHILOSOPHY FIP

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. Our focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance.

Noncompliance may be an indicator of possible disabilities. Consider further exploration of any barriers.

DEPARTMENT POLICY FIP

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), see [BEM 228](#), who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. Depending on the case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).
- 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.

See [BEM 233B](#) for the Food Assistance Program (FAP) policy when the FIP penalty is closure.

See [BEM 233B](#) for the Food Assistance Program (FAP) policy when the FIP penalty is closure. For the Refugee Assistance Program (RAP) penalty policy, see [BEM 233C](#).

NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELF-SUFFICIENCY RELATED ACTIVITIES

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities.

Noncompliance of applicants, recipients, or member adds means doing **any** of the following **without** good cause:

Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

- 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).
 - Comply with activities assigned on the 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.
 - Participate in required activity.
 - 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.

GOOD CAUSE FOR NONCOMPLIANCE

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.

Good cause includes the following:

Client Unfit

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.

Illness or 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.

Reasonable Accommodation

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.

Claimant does not dispute that she failed to attend JET. Claimant disagrees with the Medical Review Team determination. The Medical Review Team determination included Claimant's most current medical evidence to include the report from an examination which occurred AFTER Claimant was non-compliant. That fact precludes the first two good cause reasons cited above. The third reason cited above is precluded because Claimant did not attend JET and participate in the process of their determination of what activities she could perform as participation requirements.

During the hearing Claimant testified that she received all the notices sent to her by the Department and that she intentionally did not attend JET because she did not agree with the Medical Review Team's determination of her ability to work.

The evidence in this record does not establish that Claimant met her Family Independence Program (FIP) eligibility requirement to attend JET or that she had good cause for not attending.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department properly sanctioned Claimant's Family Independence Program (FIP) for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.

/s/ _____
Gary F. Heisler
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: January 25, 2013

Date Mailed: January 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.

GFH/hj

cc:

