

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201310704
Issue No: 1038
Case No: [REDACTED]
Hearing Date: January 3, 2013
Kalamazoo 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 October 31, 2012. After due notice, a telephone hearing was held on January 3, 2013. Claimant appeared by conference call and provided testimony. The department was represented by [REDACTED], a case manager and triage specialist, and [REDACTED], an eligibility specialist, both with the department's Kalamazoo County office, and [REDACTED], a case manager with the PATH (formerly Michigan Works) program.

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 unless otherwise deferred from participation.
2. On May 22, 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 but not limited to quitting a job, or being fired. (Department Exhibit 3)

3. On June 5, 2012, the department received a completed Medical Needs – JET form (DHS-54-E) from Claimant’s psychiatrist, wherein the psychiatrist indicated that Claimant was unable to work at her usual occupation or at any job for an undetermined amount of time. (Department Exhibit 4A-4B)
4. On July 2, 2012, the department received a completed Mental Residual Functional Capacity Assessment form (DHS-49-E), a completed Psychiatric/Psychological Examination Report (DHS-49-D), and supporting medical records from Claimant’s psychiatrist. (Department Exhibit 4C-4X)
5. The department approved Claimant’s deferral from the JET program for 90 days, from July 2, 2012 through October 2, 2012. (Patricia Daniel, Hearing Testimony)
6. On October 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 October 15, 2012 at 8:40 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)
7. Claimant did not attend her Work Participation Program appointment on October 15, 2012. (Department Hearing Summary)
8. On October 25, 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. The Notices indicated that, unless good cause was established, her FIP case would be closed effective December 1, 2012 for a lifetime sanction as this was Claimant’s third non-compliance. The Notice of Noncompliance also scheduled a triage appointment for Claimant on November 1, 2012 at 9:00 a.m. (Department Exhibits 7A-7B, 8A-8G)
9. Claimant arrived at the DHS Kalamazoo County office on November 1, 2012 at 9:00 a.m. for her scheduled triage appointment but left the office before her appointment was held. (Department Hearing Summary)
10. Effective December 1, 2012, Claimant’s FIP case was closed and subject to a lifetime sanction for her failure to participate as required in

employment and/or self-sufficiency related activities.
(Department Exhibit 8A-8G, 9A-9F, 10A-10F)

11. On October 30, 2012, Claimant submitted a hearing request protesting the closure of her FIP case.

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 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.

According to BEM 233A, refusing suitable employment means doing **any** of the following:

- Voluntarily reducing hours or otherwise reducing earnings.
- Quitting a job,

- Firing for misconduct or absenteeism (not for incompetence).

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.

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, on October 16, 2012, the department found that Claimant was noncompliant with the JET program due to Claimant's failure to attend her Work Participation Program appointment on October 15, 2012. And, because Claimant did not attend her triage appointment or otherwise provide good cause for her noncompliance, the department ultimately closed Claimant's FIP case and imposed a lifetime sanction on Claimant's receipt of FIP benefits, as this was Claimant's third noncompliance.

At the January 3, 2013 hearing, Claimant testified that she did receive the Work Participation Program Notice but thereafter contacted her caseworker, Mary Ahrens, who advised her that she need not attend the October 15, 2012 Work First appointment as she still remained medically deferred from her participation in the JET program. [REDACTED] did not disagree with Claimant's testimony and, indeed, acknowledged that she did advise Claimant that she remained deferred. In light of [REDACTED] testimony, [REDACTED], the department's hearing representative and a case manager and triage specialist, acknowledged that it was department error to close Claimant's FIP case and sanction her receipt of benefits when she had been advised by her own caseworker that she need not attend Work First due to her continued deferral from the program.

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 that, based on the competent, material, and substantial evidence presented during the hearing, and for the reasons stated on the record, 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 lifetime sanction on Claimant's FIP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record, decides that the department improperly closed and improperly imposed a lifetime 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 December 1, 2012; (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: January 4, 2013

Date Mailed: January 7, 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:

