

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201311555
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 30, 2012. After due notice, a telephone hearing was held on January 3, 2013. Claimant appeared and provided testimony. The following individuals also appeared and provided testimony on Claimant's behalf: [REDACTED], both Child Protective Services specialists with the department's Kalamazoo County office, and [REDACTED], Claimant's friend and roommate. The department was represented by [REDACTED], a case manager and triage specialist 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 August 10, 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 August 4, 2012, the department mailed Claimant a Work Participation Program Notice (DHS-4785), notifying her of her required attendance at the Work Participation Program on August 20, 2012 at 8:45 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 4)
4. On June 20, 2012, Claimant attended her WF/JET Special Orientation, at which time she signed, among other documents, a document titled "Volunteer Service/Work Experience Memorandum of Understanding." In signing this document, Claimant acknowledged with her signature her understanding of the requirements of the JET program including her understanding that her failure to obtain a volunteer service or work experience placement within two weeks would result in the issuance of a Noncompliance Warning Notice. (Department Exhibit 5L, see also Department Exhibit 5J, Claimant's signed June 20, 2012 JET Program Participation Guidelines)
5. On September 7, 2012, Michigan Works mailed Claimant a Noncompliance Warning Notice, informing her that she was noncompliant with the JET program due to her failure to obtain community service by the September 4, 2012 deadline as agreed to during orientation and her failure to submit her required participation hours for the week of August 26, 2012. The Notice further informed Claimant that she must attend a reengagement appointment on September 12, 2012 in order to avoid triage and a potential FIP case closure. (Department Exhibit 5N)
6. Claimant did not attend her reengagement appointment on September 12, 2012. (Department Exhibit 5O-5P)
7. On September 24, 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 November 1, 2012 for a six month sanction as this was Claimant's second non-compliance. The Notice of Noncompliance also scheduled a triage appointment for Claimant on October 4, 2012 at 9:00 a.m. (Department Exhibits 5Q-5X, 6A-6B, 7A-7F, 8A-8B)

8. Effective November 1, 2012, Claimant's FIP case was closed and subject to a six-month sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibits 5Q, 7A-7F)
9. 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 September 24, 2012, the department found that Claimant was noncompliant with the JET program due to Claimant's failure to obtain community service by the September 4, 2012 deadline as agreed to during orientation and her failure to submit her required participation hours for the week of August 26, 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 six-month sanction on Claimant's receipt of FIP benefits, as this was Claimant's second noncompliance.

At the January 3, 2013 hearing, Claimant acknowledged that she did not participate in her required Work First activities for the time period in question and indicated that this was because she did not understand the requirements of the program. Claimant further testified that she can read and she did sign all of the paperwork acknowledging her understanding of her required participation in Work First activities, but she still did not comprehend everything that she signed. Claimant further acknowledged that she did not at any time inform her DHS caseworker or her JET worker of her comprehension difficulty or any other barrier to her ability to fulfill her Work First/JET requirements. The department's representative, Patricia Daniel, confirmed that there was documentation in Claimant's case file indicating that Claimant had informed the department of any barriers to her participation in the WF/JET program. [REDACTED] further testified that she conducts the WF/JET orientations and, in doing so, she instructs all participants not to sign any forms that they do not understand.

Also at the hearing, Cheryl Green-Ollie, a Child Protective Services specialist with the department's Kalamazoo County office, testified on Claimant's behalf. In relevant part, [REDACTED] testified that she took over Claimant's CPS case in October 2012 and it is her professional opinion that Claimant lacks the required comprehension to understand and fulfill her WF/JET responsibilities because, in part, Claimant has never learned how to incorporate any structure into her everyday life.

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, because Claimant did not make the department aware of her difficulties in fulfilling her WF/JET requirements and therefore give the department the opportunity to work with her in identifying and overcoming any barriers, Claimant has failed to show good cause for her failure to participate as required in employment and/or self-sufficiency related activities and the department properly closed and imposed a six-month sanction on Claimant's FIP case due to her non-compliance with WF/JET requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed and imposed a six-month sanction on Claimant's FIP case due to her non-compliance with WF/JET requirements. The department's actions are therefore **UPHELD**.

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:



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