

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201312210
Issue No: 1038
Case No: [REDACTED]
Hearing Date: January 10, 2013
Saginaw 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 September 7, 2012. After due notice, a telephone hearing was held on November 14, 2012. Claimant appeared and provided testimony. Claimant's mother, [REDACTED], also appeared and provided testimony on Claimant's behalf. The department was represented by [REDACTED], a triage specialist with the department's Saginaw County office. Michigan Works was represented by Jerrard Johnson, a JET program assistant manager; [REDACTED], a PATH coordinator; and [REDACTED], a PATH manager.

ISSUE

Whether the department properly terminated 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.
2. At her WF/JET orientation, Claimant signed a document titled "Noncompliance Policy Excerpt for JET Orientation" 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 refusing to participate in assignments. (Department Exhibit E)

3. On October 23, 2012, Claimant attended a triage meeting that resulted in the department's finding of good cause. At that time, Claimant signed a document titled "Post-Triage JET Program Appointment Notice" in which she was informed of her required attendance at a reengagement appointment at Michigan Works on October 30, 2012 at 2:00 p.m. and her required submittal of 20 hours of job search activities at that time. (Department Exhibit D)
4. Claimant neither attended nor called in advance to reschedule her October 30, 2012 reengagement appointment. (Department Exhibits B; D, p. 2)
5. On October 30, 2012, Michigan Works mailed Claimant a Noncompliance Warning Notice, advising her that she was noncompliant with the JET program for having failed to attend her October 30, 2012 reengagement appointment. Claimant was further advised that in order to avoid triage and a potential FIP case closure, she must attend a reengagement appointment at Michigan Works on November 7, 2012 at 8:00 a.m. Claimant was further advised that if she had any questions, she must contact Michigan Works career manager Sarah White at the number provided. (Department Exhibit D, p. 2)
6. Claimant attended her November 7, 2012 reengagement appointment, at which time she signed a document titled "JET Program Reengagement Agreement" and, in doing so, agreed to: turn in her activities, as assigned; turn in her documentation, as required; contact the NWA if she needed support services; and comply with the requirements of the program. (Department Exhibit D, p. 3)
7. Also at the November 7, 2012 reengagement appointment, Claimant was given Appointment with Career Manager notice, advising Claimant of her appointment with her Michigan Works career manager on November 13, 2012 at 9:00 a.m. Claimant was further advised that her failure to make her appointment may cause her to be terminated from the Michigan Works program. Claimant was further advised that if she was unable to make her appointment, she must call her career manager at the number provided to try and reschedule the appointment. (Department Exhibit D, p. 4)
8. Claimant neither attended nor called in advance to reschedule her November 13, 2012 appointment with her Michigan Works career manager. (Department Exhibits B; D, p. 5)

9. On November 13, 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 20, 2012 at 8:30 a.m. (Department Exhibits A, F)
10. Claimant attended the November 20, 2012 triage appointment by telephone, at which time Claimant indicated she was unable to attend her November 13, 2012 appointment with her WF career manager because she started a new job on November 12, 2012. Because Claimant did not call her WF case manager and attempt to reschedule the November 13, 2012 appointment or otherwise inform her of her new job, the department concluded that Claimant did not demonstrate good cause for her noncompliance. (Department Exhibit C)
11. Effective December 1, 2012, Claimant's FIP case was closed and subject to a life-time sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibits B, F, G)
12. On November 17, 2012, Claimant submitted a hearing request protesting the department's closure of her FIP case and imposition of a lifetime sanction. (Request for Hearing)

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.

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.

In this case, Claimant was required to participate in the JET/Work First program as a condition of Claimant receiving FIP benefits. On November 13, 2012, the department found that Claimant was noncompliant with the JET/WF program due to Claimant's failure to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant's failure to attend or call in advance to reschedule her November 13, 2012 appointment with her Michigan Works career manager. And, while Claimant attended her November 20, 2012 triage appointment by telephone, the department concluded that because Claimant did not call her WF case manager and attempt to reschedule the November 13, 2012 appointment or otherwise inform her of her new job, Claimant did not demonstrate good cause for her noncompliance, resulting in the department's issuance of a third sanction and the lifetime closure of Claimant's FIP case, as set forth in the department's November 13, 2012 Notice of Case Action.

At the January 10, 2013 hearing, Claimant testified that she had reported to Michigan Works assistance manager Dolinda Rhodes on November 7, 2012 that she was beginning a new job on October 12, 2012 and would therefore be unable to attend her November 13, 2012 appointment with her Michigan Works career manager Sarah White. Claimant acknowledged, however, that she did not call Ms. White in advance of her November 13, 2012 appointment at the number provided on her Appointment with Career Manager notice despite having been advised therein that if she was unable to make her appointment, she must call her career manager at the number provided to try and reschedule the appointment.

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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

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, 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 lifetime sanction on Claimant's FIP case due to Claimant's 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 lifetime sanction on Claimant's FIP case due to Claimant's 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 16, 2013

Date Mailed: January 16, 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:

