

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201320463
Issue No: 1038
Case No: [REDACTED]
Hearing Date: February 7, 2013
County: Kalamazoo

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 October 20, 2012. After due notice, a telephone hearing was held on February 7, 2013. Participants on behalf of Claimant included [REDACTED] (Claimant) and [REDACTED] (Claimant's spouse). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] (JET/Triage Hearing Specialist) and [REDACTED] (P.A.T.H. Program Manager).

ISSUE

Whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) and 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's spouse ([REDACTED] [REDACTED]) was a FIP recipient and a mandatory WF/JET participant.
2. [REDACTED] [REDACTED] had a medical deferral which expired at the beginning of October, 2012.
3. On October 12, 2012, [REDACTED] [REDACTED] signed a Work and/or Self-Sufficiency Rules for Cash Recipients (DHS-1538) where he agreed to participate in the WF/JET program in order to receive FIP benefits.

4. On October 22, 2012, [REDACTED] physician signed a Medical Needs-JET form (DHS-54-E) which indicated that he was work eligible but with limitations.
5. On November 20, 2012, the Department scheduled [REDACTED] to attend a WF/JET appointment for December 3, 2012 at 8:45 a.m.
6. On December 3, 2012, [REDACTED] failed to attend the required WF/JET appointment.
7. On December 13, 2012, the Department mailed [REDACTED] a Notice of Noncompliance (DHS-2444) because he failed to participate as required in employment and/or self-sufficiency related activities. The Triage appointment was scheduled for December 20, 2012 at 9:00 a.m.
8. On December 20, 2012, [REDACTED] attended Triage and stated that he had good cause because he suffers from a medical condition which prevents his WF/JET participation. [REDACTED] provided the October 22, 2012 DHS-54-E in support of his contention. The Department found Claimant did not show good cause for her noncompliance.
9. The Department mailed Claimant a Notice of Case Action (DHS-1605) on December 13, 2012, which closed Claimant's FIP benefits for 3 months and reduced the FAP to \$ [REDACTED] effective January 1, 2013.
10. Claimant submitted a hearing request on December 20, 2012 protesting the closure of FAP and FIP benefits.
11. This is Claimant's (and [REDACTED] first non-compliance with the WF/JET program.

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), also referred to as "cash assistance" 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).

The Department requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A. The focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. BEM 233A. However, there are consequences for a client who refuses to participate, without good cause. BEM 233A.

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. BEM 233A. The goal is to bring the client into compliance. BEM 233A.

A Work Eligible Individual (WEI) and non-WEIs¹, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. 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.

Effective January 1, 2013, as a condition of FIP eligibility, FIP applicants must attend the PATH program (formerly JET program) and maintain 21 days' attendance. BEM 229. The Partnership. Accountability Training. Hope. (PATH) program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229. Specifically, PATH participants must complete all of the following in order for their FIP application to be approved: (1) begin the application eligibility period (AEP) by the last date to attend as indicated on the DHS-4785, PATH Appointment Notice; (2) complete PATH AEP requirements; (3) continue to participate in PATH after completion of the 21 day AEP. BEM 229. The Department will deny the FIP application if an applicant does not complete **all** of the above three components of the AEP. BEM 229.

The Department uses the 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 AEP orientation; (2) work requirements and reasons why a person may be deferred from PATH and work requirements; (3) self-sufficiency requirements; (4) penalties for non-compliance, the triage, 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

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

limit per individual; (8) prohibited use of FIP to purchase lottery tickets, alcohol, or tobacco. BEM 229. It is also prohibited for gambling, illegal activities, massage parlors, spas, tattoo shops, bail-bond agencies, adult entertainment, cruise ships or other nonessential items. BEM 229.

The DHS-1538 assists the Department ensure that the client understands his/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 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; (4) ineligible grantees. 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.

The work participation program is administered by the Workforce Development Agency, State of Michigan (WDASOM) through the Michigan one-stop service centers. BEM 230A. The work participation program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. BEM 230A.

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. A client may disclose a disability at any time. 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.

Modifications or extra help may include, but are not limited to, the following: (1) reduced hours of required participation; (2) extended education allowances including more than 12 months allowed for vocational education; or (3) extended job search/job readiness time limit. 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.

When the Medical Review Team (MRT) decision and information is received, the Department must determine what accommodations the client needs to participate in the work participation program. BEM 230A. The person must pursue employment and/or self sufficiency-related activities and the Department must follow the procedure for accommodating disabilities. BEM 230A.

The Department must serve individuals who are determined work ready or work ready with limitations by the Medical Review Team when the individual cannot be served by the work participation program. BEM 230A. These clients have a mandatory participation status in Bridges. BEM 230A. The Department must assign self-sufficiency activities up to the medically permissible limit of the individual. BEM 230A. The Department should ask the work participation program to provide any test results or other documentation about the client's limitations at the time the client is referred back to DHS. BEM 230A.

When a client is determined by MRT to be work ready with limitations becomes noncompliant with the work participation program or his/her assigned activities, the Department shall follow the same instructions outlined in BEM 233A with regard to noncompliance.

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.² 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 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.

² 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.

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.

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 information³; (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 standards⁴; (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 activities⁵; (14) **new employment** - the client quits to assume employment comparable in salary and hours (the new hiring must occur before the quit);

³ 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.

⁴ 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.

⁵ 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.

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

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACS R 400.3001-3015.

Noncompliance without good cause, with employment requirements for FIP/RCA⁶ may affect FAP if both programs were active on the date of the FIP noncompliance. See BEM 233A and BEM 233B.

Here, [REDACTED] alleges that he had good cause for his failure to report to WF/JET orientation on December 3, 2012 due to a medical condition. However, [REDACTED] has not provided any medical documentation or verification that he has a disability or a medical condition that prevents him from participation. The only documentation in the record is DHS-54-E dated October 22, 2012 where [REDACTED] physician indicates that he is "work-ready with limitations." Because [REDACTED] physician indicated that he can work with limitations, [REDACTED] was required to attend orientation. Following his orientation appointment, the Department would be required to accommodate him for continued JET participation. Here, [REDACTED] did not show good cause for his failure to attend orientation.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, [REDACTED] has failed to show good cause for failing to attend required orientation. As a result, the Department properly closed Claimant's FIP and properly reduced the FAP case for non-compliance.

⁶ Refugee Cash Assistance program.

DECISION AND ORDER

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

IT IS SO ORDERED.

/s/_____

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

Date Signed: February 13, 2013

Date Mailed: February 13, 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

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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:

