

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201320832
Issue No: 1038
Case No: [REDACTED]
Hearing Date: February 13, 2013
Kent County DHS

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 January 2, 2013. After due notice, a telephone hearing was held on February 13, 2013. Participants on behalf of Claimant included [REDACTED] (Claimant). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Case Manager), [REDACTED] (Family Independence Manager) and [REDACTED] (M.W.A./P.A.T.H. Case Manager).

ISSUE

Whether the Department properly terminated and sanctioned Claimant's Family Independence Program (FIP) 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 was a FIP recipient and a mandatory WF/JET participant.
2. On August 15, 2012, Claimant signed a Work and/or Self-Sufficiency Rules for Case Recipients form (DHS-1538).
3. In order to meet her employment related WF/JET requirements, Claimant was required to complete 20 (twenty) hours per week of job-related activity.
4. Claimant did not have any WF/JET approved reduced participation requirements.

5. On November 17, 2012, Claimant began working at The Children's Place.
6. On December 4, 2012, Claimant provided WF/JET with her employment paystubs which indicated that she worked an average of 17 hours per week.
7. Claimant understood that in order to meet her 20 weekly WF/JET requirement she would need to supplement her employment hours with job search or other approved activity.
8. On December 7, 2012, the Department instructed Claimant that she was to report to WF/JET on December 12, 2012 at 1:00p.m. and submit a Job Search/Job Readiness report which indicated at least 8 (eight) hours of job search activity.
9. On December 12, 2012, Claimant reported to WF/JET but failed to turn in any JS/JR reports. Claimant was instructed to report on December 14, 2012 by 4:00p.m. with 8 hours of JS/JR or medical documentation to support the number of hours per week she is able to work.
10. Claimant failed to show up or turn in any documentation on December 14, 2012.
11. On December 19, 2012, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for December 26, 2012 at 2:00p.m.
12. On December 26, 2012, Claimant did not attend Triage because she was admitted to the hospital.¹ The Department found Claimant did not show good cause for her noncompliance.
13. The Department mailed Claimant a Notice of Case Action (DHS-1605) on December 19, 2012, which closed Claimant's FIP benefits for 6 months effective February 1, 2013.
14. Claimant submitted a hearing request on January 2, 2013 protesting the closure of her FIP benefits.
15. This is Claimant's second non-compliance with the WF/JET program.

¹ Claimant provided medical documentation from the Cherry Street Health Center which indicated she admitted to the hospital due to pregnancy complications and that she should be on maternity leave from 12/25/12 through her due date of February 17, 2013.

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-WEIs², 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

² Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

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 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.

A person with a condition or impairment that is pregnancy-related must be deferred for a problem pregnancy. BEM 230A. Clients requesting a deferral from the work participation program due to pregnancy complications must provide verification that indicates that they are unable to participate. BEM 230A. These individuals should **not** be referred to the Medical Review Team (MRT) or to an SSI Advocate if the **only** conditions or impairments are due to pregnancy. BEM 230A.

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.³ 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.

³ 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 information⁴; (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 standards⁵; (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 activities⁶; (14) **new employment** - the client quits to assume

⁴ 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.

⁵ 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.

⁶ 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.

employment comparable in salary and hours (the new hiring must occur before the quit); (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.

Here, Claimant contends that her WF/JET case manager did not specifically require her to produce a JS/JR report which showed she had 8 hours of job search activity. Claimant further testified that she was unable to show up to WF/JET as scheduled because she was working on an "on-call" basis at The Children's Place. According to Claimant, her case manager only told her to return on a day that she was not working and provide medical documentation to show that she did not need to meet her 20 hour per week requirement. However, the Department's documentation clearly shows that Claimant was to turn in JS/JR sheets reflecting 8 hours of job search on a specific date at a specific time (December 14, 2012 at 4:00p.m.). This Administrative Law Judge finds that Claimant's statements are simply not credible.

This Administrative Law Judge recognizes that Claimant had medical documentation placing her on maternity leave which began on December 25, 2012 through February 17, 2013. This documentation is good cause for her failure to attend the Triage on December 26, 2012, but this documentation does not excuse Claimant's participation requirements for late November, 2012 or earlier in December, 2012. Claimant has not shown good cause for her failure to turn in her JS/JR reports on December 14, 2012.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause for failing to complete her attendance and job search activities. As a result, the Department properly closed Claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly closed Claimant's FIP case for noncompliance with WF/JET requirements and the 6 (six) 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 15, 2013

Date Mailed: February 19, 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

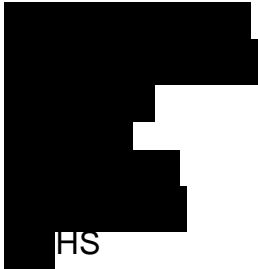
2013-20832/CAP

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:

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