

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201329547
Issue No: 1038
Hearing Date: March 13, 2013
Berrien 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 February 11, 2013. After due notice, a telephone hearing was held on March 13, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a family independence manager with the department's Berrien County office, and [REDACTED] and [REDACTED], both of whom are talent development specialists with Michigan Works.

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. On September 17, 2012, Claimant signed a document titled "My Contract with Michigan Works!" and, in doing so, acknowledged with her signature her understanding of the requirements of the JET program including, among other things, that she must complete up to 40 hours of employment related activity each week and that she must be at Michigan Works on her assigned day every week with all information on the job search log completed as instructed. Claimant further acknowledged her understanding that there are penalties for not cooperating with work or

family strengthening requirements, including a noncompliance warning notice, triage, and loss of cash assistance. (Department Exhibits 4-I, 4-J)

3. On September 17, 2012, Claimant also signed a document titled "Noncompliance Policy Excerpt for JET Orientation" and, in doing so, acknowledged with her signature her understanding that refusing to participate in assignments could lead to a triage meeting that may affect her family's benefits. (Department Exhibit 4-M)
4. On January 17, 2013 and January 18, 2013, Claimant's Michigan Works caseworker left Claimant voicemail messages informing her that she had failed to meet her required hours of weekly activities and failed to submit her complete job search logs. (Department Exhibit 4-E)
5. On January 28, 2013, Claimant's Michigan Works caseworker contacted Claimant and informed her that she had been issued a Noncompliance Warning Notice for her failure to submit her required job activities. In doing so, Claimant's caseworker advised Claimant that she was to report for a meeting on January 29, 2013 at 11:00 a.m. to submit her required hours and to sign a new Individual Activities Plan. (Department Exhibit 4-C, 4-D, 4-E)
6. Claimant neither called in advance to reschedule nor attended her January 29, 2012 meeting with her Michigan Works caseworker. (Department Exhibit 4-D, 4-E)
7. On January 30, 2013, 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, effective March 1, 2013, her FIP case would be closed for a lifetime sanction as this was Claimant's third non-compliance. The Notice of Noncompliance also scheduled a triage appointment for Claimant on February 6, 2013 at 8:30 a.m. (Department Exhibits 1, 2)
8. On February 5, 2013, Claimant requested that her February 6, 2013 triage appointment be conducted via telephone and Claimant provided a telephone number at which she could be reached. (Department Exhibit 4-D)
9. On February 6, 2013, the department attempted to contact Claimant at 9:48 a.m. and again at 3:00 p.m. at the telephone number that Claimant had provided but was unable to reach Claimant as the automated message indicated that the number was not in service. (Department Exhibit 4-D)

10. On February 7, 2013, the department determined that Claimant had failed to establish good cause for her noncompliance with the JET program. (Department Exhibit 4-D)
11. Effective March 1, 2013, 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 Exhibits 1, 2)
12. On February 11, 2013, 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.

Good cause includes the following:

- The person is working at least 40 hours per week on average and earning at least state minimum wage.
- The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. 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.

- The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.
- 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.
- The client requested child care services from DHS, PATH, 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.
- The care is appropriate to the child's age, disabilities and other conditions.
- The total commuting time to and from work and the child care facility does not exceed three hours per day.
- The provider meets applicable state and local standards. 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.
- The child care is provided at the rate of payment or reimbursement offered by DHS.
- The client requested transportation services from DHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.
- The employment involves illegal activities.
- The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.
- Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:
 - Domestic violence.
 - Health or safety risk.
 - Religion.
 - Homelessness.
 - Jail.
 - Hospitalization.
- The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

- Total commuting time exceeds: 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.

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, Claimant was required to participate in the JET/Work First program as a condition of Claimant receiving FIP benefits. On January 30, 2013, 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 meet her required hours of weekly JET activities. And, because Claimant did not attend her February 6, 2013 triage appointment or otherwise provide good cause for her failure to participate as required in the JET program, the department closed Claimant's FIP case for noncompliance with JET activities and imposed a lifetime sanction on her case.

At the March 13, 2013 hearing, Claimant testified that she did not participate in JET activities during the time period in question due to miscommunications with her Michigan Works case worker and because, on one occasion when she attempted to visit the Michigan Works office, the office was closed. Claimant offered no explanation for her failure to participate in her triage appointment, except to indicate that she did not have enough minutes on her cell phone.

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, including the case notes submitted by Michigan Works, the content of which were undisputed by Claimant, and finds that Claimant's characterization of miscommunications with her Michigan Works case worker is unsupported by the evidence, which indicates that her case worker made several attempts to contact Claimant to advise her of her unfulfilled JET responsibilities and Claimant not only failed to return these phone calls but failed to attend both her Individualized Case Plan meeting on January 29, 2013 and her February 6, 2013 triage meeting. This Administrative Law Judge further finds that Claimant's explanation for missing her telephone triage appointment (she ran out of minutes on her cell phone) to be without merit considering that Claimant had requested the telephone triage and, in doing so, was responsible for ensuring that she could be reached by the department on a working phone. Moreover, there can be no dispute that Claimant understood her JET responsibilities because on September 17, 2012, she signed several documents in a Jet Contract Packet wherein she acknowledged, among other things, her understanding that she must provide weekly documentation of her job search activities and she must remain in communication with her Michigan Works case worker and that if she failed to fulfill her JET responsibilities, she would be in noncompliance.

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 for 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 lifetime sanction on Claimant's FIP case for 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: March 21, 2013

Date Mailed: March 22, 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.

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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:

