

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

IN THE MATTER OF: Reg.

No: 201335425
Issue No: 1038
Case No: [REDACTED]
Hearing Date: April 24, 2013
County: Bay 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 March 7, 2013. After due notice, a telephone hearing was held on April 24, 2013. Claimant appeared and provided testimony. [REDACTED] a housing specialist with Housing Resources, also appeared and provided testimony on Claimant's behalf. The department was represented by [REDACTED] coordinator of the Partnership, Accountability, Training, Hope (PATH) program, and [REDACTED] a PATH worker, both of whom are with the department's Bay County office. The department was also represented by [REDACTED], a PATH career developer with Michigan Works.

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 November 5, 2012, the state Medical Review Team issued an MRT Assessment for Jet Participation Project, concluding therein that Claimant was not disabled and could work with limitations – specifically, mental

limitations whereby she is limited to unskilled work, or work that can be learned in 30 days or less – and, therefore, Claimant was not deferred from mandatory WF/JET participation requirements. (Department Exhibit 1)

3. On December 17, 2012, Claimant attended the JET orientation program, at which time Claimant informed her caseworker that she has dyslexia and a third grade reading level and her caseworker made accommodations to defer Claimant from taking a literacy assessment at that time. (Department Exhibit 10)
4. Claimant completed all required JET assignments during her orientation week of December 17, 2012.
5. On January 7, 2013, Claimant's Michigan Works caseworker issued Claimant a Noncompliance Warning Notice for her failure to participate in the JET activities as required following orientation. In doing so, Claimant's caseworker advised Claimant that she was to report for a re-engagement meeting on January 14, 2013 at 9:00 a.m. (Department Exhibits 7, 8, 10)
6. Claimant neither attended nor called in advance to reschedule her January 14, 2013 reengagement appointment. (Department Exhibit 9)
7. On January 23, 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 – specifically, Claimant's failure to participate in the JET program as required following orientation. The Notices indicated that, unless good cause was established, her FIP case would be closed effective March 1, 2013 for a three-month sanction as this was Claimant's first non-compliance. The Notice of Noncompliance also scheduled a triage appointment for Claimant on January 31, 2013 at 8:00 a.m. (Department Exhibits 4, 5, 6, 11, 12)
8. Claimant attended the January 31, 2013 triage appointment, at which time the department concluded that Claimant's reason for not participating in the JET program (she did not know how to complete her participation logs) did not establish good cause for her noncompliance for the following reasons: Claimant had been informed that she could seek assistance from JET staff with completing her logs and she failed to do so; JET staff had demonstrated a willingness to assist Claimant previously; and Claimant had successfully completed logs and paperwork on her own at the JET program. (Department Exhibit 10)

9. Effective March 1, 2013, Claimant's FIP case was closed and subject to a three-month sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibits 12, 13)
10. On March 6, 2013, Claimant submitted a hearing request protesting the department's closure of her FIP case. (Request for Hearing)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code 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 of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 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.

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.

In this case, on January 23, 2013, the department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant's failure to participate in the JET program as required following orientation. Thereafter, the department determined that Claimant's reason for not participating in the JET program (she did not know how to complete her participation logs) did not establish good cause for her noncompliance for the following reasons: Claimant had been informed that she could seek assistance from JET staff with completing her logs and she failed to do so; JET staff had demonstrated a willingness to assist Claimant previously; and Claimant had successfully completed logs and paperwork on her own at the JET program. As a result, the department closed Claimant's FIP case and imposed a three-month sanction due to this being Claimant's first noncompliance.

At the April 24, 2013 hearing, [REDACTED] a coordinator with the PATH program testified and presented documentary evidence establishing that the department was aware of Claimant's literacy limitations and had made efforts to assist and accommodate Claimant in the program with her limitations – but that these efforts also required some effort on Claimant's part to seek assistance in completing her logs, which Claimant failed to do. Indeed, Claimant testified that the department did try to work with her and assist her but that she didn't want to have to ask for such assistance as it was frustrating and discouraging for her to do so.

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, because Claimant did not make any effort to ask for assistance from the department 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 three-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 three-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: April 26, 2013

Date Mailed: April 29, 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/aca

cc:

