

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2014-26730
Issue No: 1008
Case No: [REDACTED]
Hearing Date: March 25, 2014
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on March 25, 2014, at the Kalamazoo County Department of Human Services (Department) office. Claimant personally appeared and testified. The Department was represented by Hearing Facilitator [REDACTED] and [REDACTED] and [REDACTED] with the Michigan Works Partnership, Accountability, Training, Hope (PATH) program (formerly the Work First/Jobs, Education and Training program).

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.
2. On January 23, 2014, the Department mailed Claimant a Notice of Noncompliance (DHS 2444) for her failure to participate as required in employment and/or self-sufficiency related activities. The Notice indicated that, unless good cause was established, her FIP case would be closed effective March 1, 2014, for a three-month sanction as this was Claimant's first non-compliance. The Notice scheduled a triage appointment for January 30, 2014.

3. Claimant attended Triage on January 22, 2014, and was given until 1/23/14 to provide the medical documentation needed to find good cause.
4. On January 23, 2014, Claimant failed to submit the requested medical documentation and the Department found Claimant did not establish good cause. (Depart Ex. 13).
5. On February 7, 2014, Claimant submitted an untimely hearing request protesting the Department's closure of her FIP and CDC cases. (Request for Hearing).

CONCLUSIONS OF LAW

As a preliminary matter, the Child Development and Care (CDC) program was not addressed at this hearing because the Department submitted proof that her CDC benefits were continued effective 2/12/14, and Claimant did not raise the issue.

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 and RAP 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 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.

Department policy further provides that the department must serve recipients, who are determined work ready with limitations by the state Medical Review Team (MRT), when the recipient cannot be served by PATH. BEM 230A. These recipients are considered mandatory participants and must engage in activities monitored by the department. The specialist is responsible for assigning self-sufficiency activities up to the medically permissible limit of the recipient. 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, due to a second Noncompliance Warning Notice in less than 6 months, for failing to attend a scheduled Health Care workshop on December 18, 2013, a reengagement meeting was scheduled for December 23, 2013. On December 23, 2013, Claimant signed the agreement to submit 24 hours of participation for the week of December 1, 2013, submit 40 hours for the week of December 8, 2013, and to obtain approved community service and to submit community service and employment verification by December 27, 2013. Going forward, Claimant was to have 40 hours of participation due weekly and agreed to attend scheduled workshops/meeting or would receive a second noncompliance. These facts were undisputed.

The Department noted that Claimant failed to submit her 40 hours for the weeks of December 22, 2013; December 29, 2013; January 5, 2014, and January 14, 2014.

Claimant admitted she did not work the week of December 22, 2013, because she had agreed with the person whom she worked for that she was not needed. When asked, Claimant testified that she had not informed the Department of this agreement.

Claimant credibly testified that her sister died on December 27, 2013, and she was unable to participate in the required 40 hours for the week of December 29, 2013. The Department stated that during Triage, it was agreed that the Department would waive the participation hours for the week of December 29, 2013, due to the death in Claimant's family.

Claimant also failed to turn in her 40 hours for the week of January 5, 2014. Claimant admitted she did not work that week because her children did not have school and her sister's funeral was on 1/4/14.

Claimant again failed to turn in her 40 hours of participation for the week of January 14, 2014. Claimant stated that she was at the hospital for her back on 1/14/14 and was unable to work that week. The Department stated that they did not receive any medical documentation indicating Claimant could not work that week. During the hearing,

Claimant submitted 38 pages of additional documentation. The Department stated that this was the first time they received this documentation.

A review of the 38 pages submitted by Claimant shows Claimant went to the emergency department on 1/14/14 and 1/15/14, complaining of lower back pain.

During the 1/14/14, visit, Claimant was administered Toradol in the emergency department. She had no midline tenderness on examination, and deferred x-rays. Claimant was prescribed Norco and Valium and discharged without limitations. (See Claimant Ex. 7-16, 21-22, 37).

On 1/15/14, Claimant returned to the emergency department complaining of lower back pain. She stated she could not walk. An MRI revealed degenerative changes at L4-L5 and L5-S1 level without central canal stenosis or impingement of the nerve roots. According to the medical records, on examination Claimant was not anxious and was in no acute distress. She was prescribed Norco every 4 hours for 3 days as needed for pain, Flexeril every 6 hours for 3 days as needed for muscle spasms and Ibuprofen 4 times a day as needed for pain. The records indicated Claimant's condition was not expected to worsen. There was no indication that Claimant was limited from any activities. (See Claimant Ex. 7-16, 23-32).

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).

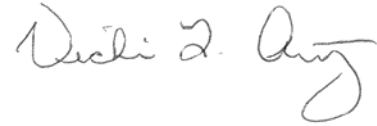
Claimant's testimony appeared credible. Claimant admitted not turning in the 40 hours of work participation as assigned, albeit with reasons. Claimant's mother's testimony was repetitious and outside the scope of the hearing.

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 properly imposed a three-month 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 three-month 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.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 7, 2014

Date Mailed: April 7, 2014

NOTICE OF APPEAL: The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

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The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

