

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

DHS Req. No: 2008-29322
SOAHR Docket No. 2008-30549 REHD
Case No: [REDACTED]
Load No: [REDACTED]

[REDACTED]
Claimant

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 24.287(1) and 1993 AACRS R 400.919 upon the request of the Department of Human Services (DHS).

ISSUE

Did the Administrative Law Judge properly determine that the Department of Human Services was in error in closing claimant's FIP case and reducing FAP due to noncompliance with employment related requirements?

FINDINGS OF FACTS

This Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On August 6, 2008, ALJ Michael Bennane issued a Hearing Decision in which the ALJ reversed the Department of Human Services' (DHS) closure of FIP benefits and reduction of FAP benefits due to noncompliance with employment related requirements.
2. On August 27, 2008, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a Request for Reconsideration submitted by DHS.
3. On October 2, 2008, SOAHR granted the DHS Request for Reconsideration and issued an Order for Reconsideration.
4. Findings of Fact 1 - 4 from the Hearing Decision, mailed on August 19, 2008, are hereby incorporated by reference.

5. Claimant was assigned to the Jobs, Education and Training Program (JET) as a part of employment related requirements.
6. Claimant was assigned to attend JET on April 23, 2008 and April 24, 2008. Claimant failed to report for both assignments.
7. On May 1, 2008, a triage was held in which DHS determined that Claimant did not have "good cause" for noncompliance with JET activities.
8. As a result, the department closed Claimant's FIP case effective May 10, 2008, and reduced the FAP case effective June, 2008.

CONCLUSIONS OF LAW

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 of Human Services (formerly known as the Family Independence Agency) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 of Human Services (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Family Independence Program (FIP) and Refugee Assistance Program (RAP) provides temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP and RAP engage in employment and self-sufficiency-related activities so they can become self-supporting. PEM 230A

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.

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JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) 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.

WEIs not referred to JET will participate in other activities to overcome barriers so they may eventually be referred to JET or other employment service. DHS must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP).

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency-related activities is subject to penalties.

All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in other employment-related services. WEIs who are temporarily deferred are required to participate in activities that will assist in overcoming barriers and prepare them for employment or referral to an employment services provider.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. **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.

FIS should clear the FAST Fall Out Report and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST noncompletion. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).

FIS must have scheduled a FSSP completion appointment with the client and the client failed to attend before considering a client noncompliant for FSSP noncompletion.

Comply with activities assigned 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. PEM 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. Document the good cause determination on the DHS-71, Good Cause Determination and the FSSP under the Participation and Compliance tab.

If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to JET.

Noncompliance by a WEI while the application is pending results in **group** ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending must have benefits delayed. A non-WEI who does not complete the FAST within 30 days and the application is still pending is denied FIP. A good cause determination is not required for applicants who are noncompliant prior to FIP case opening.

The penalty for noncompliance without good cause is FIP closure. Effective April 1, 2007, the following minimum penalties apply:

For the first occurrence on the FIP case, close the FIP for not less than three calendar months unless the client is excused from the noncompliance as noted in First Case Noncompliance Without Loss of Benefits below.

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For the second occurrence on the FIP case, close the FIP for not less than three calendar months.

For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.

The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties.

Begin the sanction period with the first pay period of a month. Penalties are automatically calculated by the entry of noncompliance without good cause on the FSSP. This applies to active FIP cases, including those with a member add who is a WEI JET participant.

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 PEM 233A, MCL 400.57g, 42 USC 607.

Noncompliance without good cause with employment related activities for FIP will result in penalties affecting FAP if a client is receiving FAP and FIP at the time of the noncompliance. DHS budgets the last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the first two noncompliances or 12 months for the third and subsequent noncompliances) after the FIP case closes for employment and/or self-sufficiency-related noncompliance. PEM 233B

In the present case, the Administrative Law Judge was incorrect in determining that the department erred in closing claimant's FIP and reducing FAP due to noncompliance. Claimant was assigned to attend the JET program on two occasions (April 23, 24th). She failed to attend either appointment. She argued that she had "good cause" for failing to attend JET because she lacked transportation. Policy indicates that "good cause" reasons include:

The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. PEM233A

However testimony presented at the hearing indicates that claimant was offered free bus tickets for travel to the JET site. Claimant admits that she did have access to the bus tickets but that she found transportation on the bus to be inadequate. She indicated that the bus would arrive late at the site and that it was unreliable. It should be noted that Claimant never attempted to take the bus. Claimant further argues that her request for vehicle repair was denied and that this denial should be taken into account in determining whether she had "good cause" for failure to attend JET.

Per policy the department has discretion and is not required to provide vehicle repairs in such a case. PEM 232 This Administrative Law Judge finds that there was insufficient evidence on the record to substantiate "good cause" for noncompliance with employment related requirements.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Administrative Law Judge erred when he found that DHS incorrectly closed Claimant's FIP and reduced FAP.

IT IS THEREFORE ORDERED:

That the Administrative Law Judge's decision mailed August 19, 2008 on the issue of noncompliance with employment related requirements, the issue of closure of FIP and the issue of reduction of FAP is REVERSED.

That the Department decision to close claimant's FIP and reduce Claimant's FAP be and is hereby AFFIRMED

/s/
Rhonda Craig
Administrative Law Judge
for Michigan Department of Human Services

cc: 

Date Signed: June 24, 2009
Date Mailed: June 25, 2009

***** NOTICE *****
The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.