

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-29434

Issue No: 1038; 3028

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 18, 2008

Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Jana B. Bachman

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. After due notice, an in-person hearing was held on November 18, 2008.

ISSUE

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

(1) During [REDACTED], claimant was a recipient of FIP and FAP. She was assigned to attend Work First at the [REDACTED]. [REDACTED]lfare

[REDACTED]

(2) [REDACTED], claimant attended orientation and received and signed all required paperwork. [REDACTED] claimant indicated that her barrier to employment were lack of driving skills. Department A, Update/View Case Notes.

(3) [REDACTED], claimant did not appear for job search sign in. [REDACTED], claimant did not appear for job search sign in or her scheduled [REDACTED] triage appointment. Department A, [REDACTED]
[REDACTED]; Update/View Case Notes.

(4) [REDACTED], the claimant's Work First case was closed and she was referred to the department for noncompliance. Department A, Update/View Case Notes.

(5) [REDACTED], claimant was sent timely notice that her FIP and FAP would be reduced due to failure to participate in work related activities. The action was deleted pending hearing.

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 (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 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 (DHS or department) 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).

Department manuals provide the following policy statements and instructions for caseworkers:

All Family Independence Program (FIP) eligible adults and 16-and 17-year-olds not in high school full-time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless 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 to find employment.

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

Program Eligibility Manual (PEM) 230A

LEGAL BASE

MCL 400.57f
42 USC 607

A Work Eligible Individual (WEI) who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

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.

- 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) or PRPFC.
- Appear for a scheduled appointment or meeting.
- 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.

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. Do not do a new JET referral.

Good cause includes the following:

- Employed 40 Hours
- Client Unfit
- Illness or Injury

- The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client.
- Reasonable Accommodation
- No Child Care
- No Transportation
- Illegal Activities
- Discrimination
- Unplanned Event or Factor
 1. Domestic violence.
 2. Health or safety risk.
 3. Religion.
 4. Homelessness.
 5. Jail.
 6. Hospitalization.
- Comparable Work
- Long Commute

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.

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. Locally coordinate a 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, offer a phone conference at that time. Clients must comply with triage requirements within the negative action period.

Determine good cause 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.

First Case Noncompliance Without Loss of Benefits

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is “No Good Cause”, do the following:

Review and modify the FSSP as necessary during the triage.

Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.

Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period.

Advise the client that the instance of noncompliance will remain on record even if the client complies. The noncompliance will be excused, but not erased and could result in longer sanctions if the client is noncompliant in the future.

If the client accepts the offer to comply, document compliance activities on the DHS-754. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754.

When a phone triage is conducted for a first noncompliance and the client agrees to comply, complete the DHS-754 as you would complete for an in-person triage meeting. When completing the form note in the client signature box “Client Agreed by Phone”. Immediately send a copy of the DHS-754 to the client and phone the JET case manager if the compliance activity is to attend JET and the JET case manager was not included in the phone triage.

When the client verifies compliance within the negative action period and is meeting the assigned activity that corrects the non-compliance, delete the second negative action. If the case closed in error, reinstate the case with no loss of benefits.

If the client does not accept the offer to comply, document the decision on the FSSP under the “Participation and Compliance” tab and allow the case to close.

If the client fails to meet or contact the FIS within the negative action period or fails to provide verification of compliance without good cause, the 3-month sanction applies.

This policy only applies for the first case of noncompliance on or after April 1, 2007. It is only offered one time for each case for the first noncompliant member on that case when there is no good cause.

If the noncompliant member joins a new group, the penalty would apply to the new group. Continue to process the good cause determination and noncompliance for the new group.

PEM 233A

LEGAL BASE

MCL 400.57g
42 USC 607

Non-deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. In order to receive Food Assistance Program benefits, non-deferred adults must comply with the following work requirements:

Non-deferred adults who are already working may not:

- Voluntarily quit a job of 30 hours or more per week without good cause, or
- Voluntarily reduce hours of employment below 30 hours per week without good cause, or
- Be fired from a job for misconduct or absenteeism (i.e. not for incompetence).
- If the job quit, reduction in hours or firing occurred more than 30 days prior to the application date, no penalty applies.
- Non-deferred adults who are not working or are working less than 30 hours per week must:
 1. Accept a bona-fide offer of employment
 2. Participate in activities required to receive Unemployment Compensation (UC) if the client has applied for or is receiving UC.
- If a client is an applicant or recipient of UC, they must follow through with the UC program's procedures and requirements. This work requirement does not apply to a client who is clearly not eligible for UC. Do not require a client to apply for UC in order to receive FAP.

Disqualify FAP clients for noncompliance if:

- The applicant or recipient is not deferred (see deferrals in this item), and
- The applicant or recipient is noncompliant with one of the Food Assistance work requirements listed above.
- In order to provide all FAP adults with the opportunity to pursue employment and/or education and training that will lead to self-sufficiency, you may encourage FAP applicants and recipients to pursue employment services such as Job Search, employment counseling, education and training, etc.
- Workforce Investment Act (WIA) services may be available to all adults in FAP households.
- You may not disqualify Food Assistance Program applicants or recipients for failing to comply with WIA services or any other employment and training component you suggest.

PEM 230B

LEGAL BASE

FAP

Food Stamp Act of 1977, as amended
7CFR Parts 272 and 273
FNS Waiver 2040026

Disqualify a FAP group member for noncompliance when:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP employment requirements, and
- The client is not deferred from FAP work requirements, and
- The client did not have good cause for the noncompliance.

Good cause is a valid reason for failing to participate in employment and/or self-sufficiency-related activities or refusing suitable employment. Investigate and determine good cause before deciding whether to impose a disqualification. Document the good cause determination on a DHS-71, Good Cause Determination. Good cause includes the following:

- Deferred
- Meets Participation Requirements
- Wage Under Minimum
- Client Unfit
- Health or Safety Risk
- Illness or Injury
- Religion
- Net Income Loss
- No Child Care
- No Transportation
- Illegal Activities
- Discrimination
- Unplanned Event or Factor
- Comparable Work, Job Quits
- Education or Training - the employment interferes with enrollment at least half time in a recognized education or job training program.
- Long Commute
- Unreasonable Conditions
- Forced Move
- Retirement
- Unkept Promise of Work
- Union Involvement
- Strike or Lockout
- Work Not Familiar

PEM 233B

LEGAL BASE

Food Stamp Act of 1977, as amended
R400.3610 and 7CFR 272 and 273.5
FIP 1939 PA 280

In this case, claimant was a mandatory participant in work-related activities during [REDACTED]. Claimant did not appear for mandatory sign in [REDACTED] and [REDACTED] and did not appear for her [REDACTED] triage meeting to discuss good cause. Finding of Fact 1-5. At hearing, claimant testified that she was in Arkansas looking for work when a bad storm occurred and she could not get back to [REDACTED]. It was unclear on what date the storm occurred, the amount of time she was delayed by the storm, or why the storm prevented her return to [REDACTED]. In any case, claimant did not contact the department or Work First Agency to discuss the matter at the time it occurred. On her hearing request, she indicated that she never received help with employment transportation. There is no mention of a storm.

Claimant also testified that she checked her mail and did not receive any notice of noncompliance. Claimant wrote her hearing request on the back of her timely notice of penalty for noncompliance. No evidence was presented to establish claimant's mail was returned to the department or that problems with mail were an issue.

After careful examination of the record, a preponderance of the evidence establishes that claimant was a mandatory participant in employment-related activities; she was provided proper notice of the requirements and penalties of the program; she failed to participate and did not establish good cause. Finding of Fact 1-5. Therefore, the department has met its burden of proof that it properly proposed to sanction claimant's FAP and FIP benefits due to failure to participate with employment-related activities. As such, the department's action must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services acted in compliance with department policy.

Accordingly, the department's action is HEREBY UPHELD.

/s/ _____
Jana B. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

NOTICE: Administrative Hearings 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. Administrative Hearings 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 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.

JBB/db

cc: _____

