

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: 2009-10727

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 19, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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, a telephone hearing was held on February 19, 2009. The claimant personally appeared and testified.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits in December, 2008?

FINDINGS OF FACT

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

1. The claimant was receiving FIP benefits and was determined to be a mandatory participant with the Work First/Jobs, Education and Training (WF/JET) program.

2. The claimant was mailed a Jobs, Education and Training Appointment Notice (DHS-4785) on October 15, 2008, which indicated that the claimant needed to attend a WF/JET appointment on either October 21, 2008 or October 28, 2008 (Department Exhibit #2).

3. The claimant did not attend the WF/JET appointments on either of these days and was mailed a Notice of Noncompliance (DHS-2444) on December 15, 2008, setting a triage appointment for December 22, 2008 (Department Exhibit #4).

4. The claimant did not attend the triage appointment and the department found no good cause for the WF/JET noncompliance (Department Exhibit #3).

5. The case was placed into negative action and closed on December 27, 2008 (Department Exhibit #6).

6. The claimant did call the department representative on December 23, 2008, and left a message requesting to reschedule her triage appointment.

#### 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).

Department policy states:

#### **DEPARTMENT PHILOSOPHY**

#### **FIP**

DHS requires clients to participate in employment and self-

sufficiency-related activities and to accept employment when offered. Our focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency-related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance.

Noncompliance may be an indicator of possible disabilities. Consider further exploration of any barriers.

## **DEPARTMENT POLICY**

### **FIP**

A Work Eligible Individual (WEI), see PEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

See PEM 233B for the Food Assistance Program (FAP) policy when the FIP penalty is closure. For the Refugee Assistance Program (RAP) penalty policy, see PEM 233C. PEM 233A, p. 1.

### **NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELF-SUFFICIENCY-RELATED ACTIVITIES**

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. PEM 233A, pp. 1-2.

### **GOOD CAUSE FOR NONCOMPLIANCE**

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.

See "School Attendance" PEM 201 for good cause when minor parents do not attend school.

### **NONCOMPLIANCE PENALTIES FOR ACTIVE FIP CASES AND MEMBER ADDS**

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 3 calendar months unless the client is excused from the noncompliance as noted in “First Case Noncompliance Without Loss of Benefits” below.
- . For the second occurrence on the FIP case, close the FIP for 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for 12 calendar months.

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

### **TRIAGE**

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 requirement within the negative action period.

When a phone triage is conducted for a first noncompliance and the client agrees to comply, complete the DHS-754, First Noncompliance Letter, as you would complete in a triage meeting. 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.

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.

If the FIS, JET case manager, or MRS counselor do not agree as to whether “good cause” exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking.

**Note:** Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. This does not include applicants. PEM 233A, p. 7.

**Good Cause Established**

If the client establishes good cause within the negative action period, do **NOT** impose a penalty. See “Good Cause for Noncompliance” earlier in this item. Send the client back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. Do not enter a new referral on ASSIST. Enter the good cause reason on the DHS-71 and on the FSSP under the “Participation and Compliance” tab.

**Good Cause NOT Established**

If the client does NOT provide a good cause reason within the negative action period, determine good cause based on the best information available. If no good cause exists, allow the case to close. If good cause is determined to exist, delete the negative action. PEM 233A, pp. 10-11.

In this case, the claimant does not dispute that she did not attend WF/JET on either of the dates provided to her. The claimant testified that she did not receive the JET appointment notice. The department testified that no mail was returned to sender for the claimant. The claimant admitted that she had received the hearing summary, the notice of hearing, the notice of noncompliance and the letter indicating that her benefits were going to be terminated and her case sanctioned for three months due to the noncompliance. Thus, according to the claimant’s testimony, the only document she claims not to have gotten is the JET appointment notice. This seems odd considering she received all the rest of the department’s mail.

The claimant testified that she did receive the notice of the triage appointment, but that she didn’t attend because she was having some car issues. The claimant testified that she called prior to the scheduled triage to let [REDACTED] know that she was having car problems. However, [REDACTED] testified that the claimant did not call the department until after the triage, on December 23, 2008. [REDACTED] testified that the claimant left a message and requested to

reschedule her triage appointment. The department testified they did not reschedule the triage appointment, as the claimant had already missed the appointment the day prior.

However, policy indicates that if a client calls to reschedule an already scheduled triage meeting, the department should offer a phone conference at that time. Clients must comply with triage requirement within the negative action period. (PEM 233A, p 8). In this case, department's testimony indicates the claimant did call to reschedule the triage prior to the case closure. Thus, the department was required to offer her the opportunity for a phone conference or the opportunity to reschedule the in-person triage meeting prior to the closure date of the case (December 27, 2008). The department is not required to hold the case open beyond the scheduled closure date, but they are required to allow the claimant the opportunity to comply with the triage requirement within the negative action period.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department did not properly terminate the claimant's benefits in December, 2008.

Accordingly the department's decision is REVERSED. The department shall:

1. Re-open the claimant's FIP case back to the date of closure, December 27, 2008.
2. Issue the claimant any retroactive FIP benefits that she is entitled to.
3. Schedule the claimant a triage appointment.
4. If the claimant has good cause for the noncompliance, refer her back to WF/JET.
5. If the claimant does not have good cause for the noncompliance and she attends the triage appointment (in person or by telephone), offer the DHS-754, First Noncompliance Letter and refer her back to WF/JET for the compliance test.

SO ORDERED.

/s/  
\_\_\_\_\_  
Suzanne L. Keegstra  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 2, 2009

Date Mailed: March 4, 2009

**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 mailing 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.

SLK 

cc: 