

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: 2009-12910

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 9, 2009

Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 April 9, 2009. Claimant personally appeared and testified along with [REDACTED] volunteer caseworker from her church. In addition to department's staff, Work First staff participated in the hearing also.

ISSUE

Did the department correctly terminate claimant's Family Independence Program (FIP) benefits in November, 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. Claimant was a FIP recipient and signed a Work and/or Self-Sufficiency Rules for Cash Recipients form on April 17, 2008. This form explains claimant's Work First/Jobs,

Education and Training (WF/JET) requirements, penalties for noncompliance with WF/JET, and good cause reasons for such noncompliance (Department's Exhibit #3).

2. On September 10, 2008, department received a note from claimant's doctor that she is having surgery on September 24, 2008, and would be off work until October 1, 2008 (Department's Exhibit #4).

3. On October 15, 2008, department mailed the claimant a Verification Checklist telling her she as she is no longer on a medical deferral she must return to the JET program, and that she is referred to attend on October 20, 2008. Included with the Checklist was a WF/JET Appointment Notice telling the claimant to report to a WF location on October 20, 2008 (Department's Exhibits #5 and 6).

4. Claimant called JET worker on October 22, 2008, and left a message she was still sick and so was her 6 year-old. On October 23, 2008, claimant provided a doctor's note dated October 21, 2008, saying she is released to work/school on October 23, 2008. However, the claimant also stated that her son has a doctor's appointment on this date. Claimant was made aware of the attendance policy regarding two excused absences allowed within a calendar month (Department's Exhibit #7).

5. Claimant was scheduled for an interview with [REDACTED] on November 5, 2008. Claimant did not show up for this interview, and when questioned why, stated she forgot. JET staff requested a triage meeting (Department's Exhibit #7).

6. On November 7, 2008, department mailed the claimant a Notice of Noncompliance scheduling a triage appointment for November 14, 2008. This notice has a box checked on it telling the claimant this is at least the third time a member of her FIP group is non-

compliant. Page 2 of this form has a box checked by 3rd non-compliance stating “your case will close for a minimum of 12 months”. (Department’s Exhibits #10 and 11).

7. On November 13, 2008, claimant dropped of a letter saying she has two “good cause” reasons for failing to show up for the November 5, 2008, employment interview. First reason was that she was scheduled for an interview with a prospective employer, the interview was set for 12 noon on 11/5/08, then on the morning of 11/5/08, her JET worker “ordered” her to go on the JET van so she went on the van and the van driver did not return her back to Michigan Works in time for the noon interview (Department’s Exhibit #9).

8. Claimant stated as her second “good cause” reason for failing to show up for November 5, 2008, interview that she is under treatment at [REDACTED] [REDACTED] for Post Traumatic Stress Disorder and Major Depression, her symptoms are currently debilitating and her treatment team advised her that she is currently too ill to work or participate in the JET program. Claimant also stated she did not provide a doctor’s statement for this illness because on October 23, 2008, her JET worker told her she would not accept any more doctor’s statements.

9. A triage meeting was held on November 14, 2008, and no good cause was found for claimant’s failure to attend the November 5, 2008, employment interview (Department’s Exhibit #12). Claimant was however given additional time, until November 26, 2008, to provide medical information regarding her claimed disabling condition (Department’s Exhibit #13).

10. On November 18, 2008, claimant dropped off a statement from [REDACTED] [REDACTED], an [REDACTED] saying that the claimant is a patient there, she is being treated for Posttraumatic Stress Disorder and Major Depression, symptoms of these conditions have been debilitating for the claimant for several months, interfering with her ability to participate

productively and effectively in the JET program. [REDACTED] concludes her letter by saying “consequently, she missed an appointment on 11/5/08, for an employment interview”.

(Department’s Exhibit #14).

11. On November 24, 2008, claimant dropped off another statement from an M.D. saying she is unable to return to work until December 1, 2008, due to illness beginning November 20, 2008, with a notation saying “pt. states she has been ill since 11/5”.

(Department’s Exhibit #15).

12. Claimant’s FIP benefits closed on November 26, 2008. Additional medical statement on a prescription note was received by the department on December 3, 2008, stating that the claimant is in active treatment at [REDACTED], she has been off work since November 5, 2008, due to her emotional instability and will remain off work for the next 3 months (Department’s Exhibit #16).

13. Claimant requested a hearing on January 29, 2009, stating “because I have been triage for my mental illness I did not know how ill I was so I could not tell how ill if I do not know I had doctor’s slip for every excuse”.

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).

Departmental 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.

Claimant was deferred from JET participation due to having surgery in September, 2008. Once this deferral ended (based on return to work date given by claimant's doctor), claimant was correctly referred back to JET. A job interview was scheduled for the claimant for November 5, 2008, for noon on this date. Claimant reported on time to board the JET van that takes WF/JET participant to different locations to apply for jobs, but never made it back for the job interview. JET staff explained that it is the claimant's responsibility to let the van driver know that she has an interview at a particular time, and that there is a log that has to be

completed for the van driver to let him know if a client must be at a particular place and at a particular time.

Claimant has offered several explanations as to why she did not attend the November 5, 2008, interview. These explanations include not knowing the extent of her mental illness and their impact on her ability to let the JET van driver know she had an appointment on November 5, 2008, that she forgot about the interview, that she was ordered onto the JET van and the van driver did not return her to Michigan Works in time for the noon interview, that her doctor's note states she was ill on November 5, 2008, and that her emotional instability makes her unable to work for the next 3 months according to the P.A. note of December 2, 2008, after her FIP case closed.

In addition, hearing testimony from claimant's friend, her church's volunteer case manager, is that the claimant requested reasonable accommodations due to her disability in accordance with departmental policy, she can request these at any time and was not required to disclose her condition until she did on November 5, 2008, and that the department should have given the claimant additional time to provide more medical information. Departmental policy states:

REASONABLE ACCOMMODATION

Disability Definition

Section 504 and the ADA define a disability as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities under Section 504 of the Rehabilitation Act of 1973, (Section 504), the Americans with

Disabilities Act of 1990, and Michigan Persons with Disabilities Civil Rights Act. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to policies and requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency.

When a client requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements. If needed, a plan for reasonable accommodation is documented and justified in the client's Family Self-Sufficiency Plan (FSSP) and the individual Service Strategy (ISS with the MWA).

Clients who claim disability must be advised that they may be required to engage in self-sufficiency and family strengthening activities even if they are deferred from JET or work activities and may be subject to penalties if they do not participate as required.

The existence of a disability must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future.

Screening and Assessment

Be alert to undisclosed or unrecognized disabilities and offer screening and assessment as appropriate. Help clients understand that DHS can only offer accommodations if a disability is verified. Clients are screened for disabilities on the DHS-619, Jobs and Self-Sufficiency Survey and the FAST, which ask questions about medical problems, special education and symptoms of mental illness.

Inform clients requesting accommodation or deferral that they may be required to attend appointments with MRS, doctors, psychologists, or others to ensure that appropriate accommodations or deferrals are made. Explain that assessment is voluntary but failure to cooperate with assessment may prevent DHS from providing a deferral or accommodation. PEM 230A, pp. 2-3.

Accommodation

If a person has a disability that affects his or her ability to comply with program rules or requirements, those rules or requirements may be modified, or extra help may be provided. Individuals must not be assigned to activities that they are unable to do because of their disability or the disability of a spouse or child in their household.

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours they are engaged even if they do not meet federal work requirements. PEM 230A, p. 3.

Department did receive a note from claimant's therapist, as allowed in departmental policy quoted above, stating that she has mental issues that interfere with her ability to participate in the JET program. Claimant cited such issues at the triage meeting of November 14, 2008. Claimant's caseworker told the claimant she had to provide additional medical information by November 26, 2008. Claimant states that she could not get in to see a psychologist for a number of weeks, and assumed that the note from her therapist would be sufficient for the department.

Departmental policy regarding JET deferrals and how to verify reasons for deferral states that for temporary incapacity department is to obtain medical evidence if the client claims a disabling condition expected to last 90 days or less. If needed, the department can authorize a general medical exam or payment for a medical report in accordance with PAM 815. If a client claims a disabling condition expected to last more than 90 days, it must be verified by either a note from client's doctor, DHS-49, or a DHS-54A. PEM 230A, p. 23. Departmental policy additionally states:

Deferral for Short-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity which is expected to last less than three months and which prevents participation. Defer for up to three months.

Verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs form, or other written statement from an M.D. or D.O.

If a non-pregnancy-related condition lasts or is expected to last more than 3 months, follow deferral policy for long-term incapacity below.

Deferral for Long-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity expected to last more than three months and preventing their participation in employment-related activities.

When a client states they are disabled or indicates that he/she may be unable to participate in work or JET (including those who have applied for RSDI/SSI) because of a mental or physical condition, injury, illness, impairment, or problem at intake, review or anytime during an ongoing benefit period, require the client to provide verification from their doctor (a DHS-49 or DHS-54A may be used). PEM 230A, pp. 12-13.

Department is correct in stating that the claimant's medical information about her mental issues came from a therapist and not a M.D. or a D.O. as stated in policy on deferrals for short and long term incapacity. The policy however, does state that the department can authorize a general medical exam or medical reports, if needed, and schedule and pay for such exams. Department did not do so in claimant's case, even though it is apparent that the claimant was confused about what kind of medical information she had to provide and department found the information she did provide insufficient. Furthermore, reasonable accommodation part of the policy quoted above does allow for verification of disability by a therapist, as the purpose of such verification is not necessarily a deferral but determining what a client can do with such disabilities. Department did receive a note from claimant's therapist on November 18, 2008,

prior to FIP case closure, stating that the claimant has mental issues “interfering with her ability to participate productively and effectively in the JET program”. An example of reasonable accommodation for the claimant, if taking into account her therapist note, would have been a JET staff member verbally or by a note advising the JET van driver that the claimant has an employment interview on a particular day and time. While this could not have been done on November 5, 2008, as neither the department nor JET staffs were in possession of any therapist records at that time, the policy does allow the clients to claim a disability or request an accommodation at any time under reasonable accommodation section. PEM 230A, p. 3. Therefore, the department should have reviewed claimant’s ability to participate in JET program and determined any reasonable accommodation requirements in order for her to do so once the therapist note was received on November 17, 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly terminated claimant's FIP benefits on November 26, 2008.

Accordingly, department's action is REVERSED. Department shall:

1. Reinstatement claimant's FIP benefits retroactively to November 26, 2008, closure date.
2. Issue the claimant any FIP benefits she did not receive as a result of November 26, 2008, closure.
3. Review claimant's medical condition to determine if she can participate with the JET program with reasonable accommodations.
4. If the claimant states she is unable to participate under any circumstances, obtain medical records to include therapy notes pertaining to claimant's stated mental issues and any physical issues she claims she may be having.

5. Refer the claimant's Michigan Rehabilitation Services (MRS) for an evaluation.
6. If MRS determines they cannot work with the claimant, explore JET deferral with Medical Review Team (MRT).
7. Claimant is advised that if her medical information is submitted to MRT after other options of JET or MRS participation are explored and MRT denies a JET deferral, she must participate in JET activities or she can lose her FIP benefits for a period of at least one year.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 13, 2009

Date Mailed: April 14, 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.

IR 

cc: 