

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: 2009-16529
Issue No: 1038; 3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's timely request for a hearing. After due notice, an in-person evidentiary hearing was held on May 12, 2009 in Flint, Michigan, at the Genesee County (05) DHS office.

ISSUE

Did the Department of Human Services (DHS) properly propose to sanction claimant's Family Independence Program (FIP) grant on the grounds that a member of the household did not participate in the Work First/Jobs, Education and Training (WF/JET) program without good cause?

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 relevant times prior to the action herein, the relevant group consisted of three individuals--two adults and one child. The actual grant is based upon two as the child is an SSI recipient. Claimant is an adult female member of the group; the other individual who is a member of the group is an adult male.

(2) It appears that at the time of the proposed sanction both the adult members were mandatory WF/JET group participants.

(3) Precipitating the negative action herein, the subcontracting agency for the DHS administering the WF/JET program was discontinued and a new agency took over as the subcontractor on or about the end of October/first of November, 2008.

(4) The adult male member of the household participated on October 30, 2008. Both adults missed October 31, 2008. Evidence on the record indicates that the previous agency closed on 10/31/08. 10/31/08 was on a Friday.

(5) Claimants called their counselor on the following Monday, November 3, 2008, and were informed to wait for paperwork. No paperwork was received by either adult.

(6) The adult female member discovered that she was pregnant on November 12, 2008 and at a very high risk.

(7) Claimants requested to review the attendance sheets, which were not available at the administrative hearing.

(8) The individual who testified at the administrative hearing did not have personal knowledge of the case.

(9) No individuals from either the old or the new JET agency were present at the administrative hearing, in person or by phone for testimony and/or cross-examination.

(10) The DHS worker who conducted the triage by the DHS was not available at the administrative hearing for testimony and/or cross-examination.

(11) Claimants credibly testified that they contacted the JET agency at the time of the transition and were informed that the agency did not know the direction or structure of the new subcontracting agency and that individuals should wait for paperwork.

(12) The adult female member of the household was in constant contact with the local office all the way up until the date of the hearing with regards to her high risk pregnancy and provided verification(s) related to the same. The DHS never informed the adult female (or male) that there were issues with nonparticipation.

(13) On 2/25/09, the DHS issued a notice of triage for the adult male.

(14) A 3/9/2009 note on the “update/view case notes” sheets states: “No good cause found. Case closed effective 3/9/09...” The department testified that the entire sheet was with reference to the adult male. It was noted that an 11/06/2008 note on the sheet states: “Client attended JSA 24 hours a week ending 10/31/08. She is in compliance.” The notes were patently ambiguous. No one from JET was present at the administrative hearing.

(15) On 3/3/09, the department issued a notice of case action with an effective date of 3/17/09 to sanction for failure to participate in the JET program to the adult male.

(16) On 3/11/09, claimant filed a timely hearing request. The department reinstated the action pending the outcome of the 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).

Applicable policy and procedure to the case herein states in part:

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.

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.

Medicaid

Termination of FIP for noncompliance with employment-related activities **does** not mean ineligibility for Medicaid. PEM 233A, p. 11.

GOOD CAUSE FOR 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

- . The person meets one of the deferral criteria. See “DEFERRALS” in PME 230B.

Meets Participation Requirement

- . The person meets participation requirements. See “DEFERRALS” in PEM 230B.

Wage Under Minimum

- . Except for sheltered workshops, the wage offered, including tips, is less than the applicable state minimum wage.

Client Unfit

- . The client is physically or mentally unfit for the job, as shown by medical evidence or other reliable information.

Health or Safety Risk

- . The degree of risk to health or safety is unreasonable.

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.

Religion

- . The working hours or nature of the employment interferes with the client's religious observances, convictions or beliefs.

Net Income Loss

- . The employment causes the family a net loss of cash income.

No Child Care

- . Child Development and Care (CDC) is needed for a CDC-eligible child, but none is adequate, suitable, affordable and within reasonable distance of the client's home or work site. See PEM 703.

No Transportation

- . Reasonably priced transportation is not available to the client.

Illegal Activities

- . The employment involves illegal activities.

Discrimination

- . The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc.

Unplanned Event or Factor

- . Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities.

Comparable Work, Job Quits

- . The client obtains comparable employment in salary or hours to the job that was lost.

Note: When a client quits a job and during the negative action period secures employment, the penalty still applies unless the new job meets the definition of comparable work above.

Education or Training

- . The employment interferes with enrollment at least half time in a recognized education or job training program.

Long Commute

- . Total commuting time exceeds:
 - .. Two hours per day not including time to and from child care facilities, **or**
 - .. Three hours per day, including time to and from child care facilities.

Unreasonable Conditions

- . The employer makes unreasonable demands or conditions (e.g., working without being paid on schedule).

Forced Move

- . The person must quit a job and move out of the county due to another group member's:
 - .. Employment, or
 - .. Employment and/or self-sufficiency-related activities, or
 - .. Enrollment at least half time in a recognized education or job training program.

Retirement

- . The employer recognizes the person's resignation as retirement.

Unkept Promise of Work

- . For reasons beyond the person's control, promised employment of at least 30 hours per week (or the state **minimum** wage times 30 hours) does not materialize or results in less than that minimum.

Union Involvement

- . The person must join, resign from, or retrain from joining a labor organization as an employment condition.

Strike or Lockout

- . The work is at a site subject to a strike or lockout (not enjoined by federal law) at the time of the offer.

Work Not Familiar

- . In the first 30 days after determined a mandatory FAP participant, the only employment offered is outside the person's major field of experience. PEM 233B, pp. 4-6.

At an administrative hearing, the general rule for going forward is that the department must proceed with evidence to show why it took the action taken and the supporting reasons and policy to support that action. Put in another way, in most cases, the department has the burden of proof and the responsibility to produce adequate evidence to establish and support the action taken and the reason it was taken.

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that the department failed to sustain its burden of proof in this case.

In this case, as noted in the Findings of Fact, the individual at the administrative hearing who presented the case did not have personal knowledge of this case. The individual who did

have personal knowledge was not available at the administrative hearing for testimony and/or cross-examination. Nor were any individuals from the old or new JET agencies available. As noted, there were two different agencies in existence and evidently in transition at the time of the statement on the case notes indicating that the adult male was in noncompliance. However, claimant was unable to illicit any cross-examination from the JET agencies.

Claimant credibly testified that he was in attendance on October 30, 2008. Claimant further credibly testified that he was not in attendance on October 31, 2008, when the agency actually made the transition and/or shut its doors. Claimant further credibly testified that contact was made on the following Monday and was told to wait for paperwork.

The agency had no evidence at the administrative hearing of any kind of paperwork, or notice issued to claimants regarding the change in the two agencies and/or the expectations regarding participation. It is also noted that the adult female of the household was in constant contact with the DHS local office from the time of the transition with the JET agency until the time of the proposed negative action. At all times, the department was able to inform the adult members of any participation and/or perceived problems with regards to the JET program. Under PAM Items 105 and 130, the department has a general responsibility to clearly communicate with individuals as to what participation/verification is necessary. There was no evidence presented in this case of any such notice(s).

For these reasons, and for the reasons stated above, this ALJ finds that the DHS failed to meet its burden of proof and thus, the department's proposed sanction is reversed. See Administrative Hearings Handbook; PAM Item 600.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed sanction was incorrect.

Accordingly, the department's proposed sanction is hereby REVERSED.

/s/

Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 20, 2009

Date Mailed: May 22, 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 mailing date of the rehearing decision.

JS/cv

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