

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: 2009-16905  
Issue No: 1038  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 28, 2009  
Saginaw 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 April 28, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine the claimant was noncompliant with Work First/Jobs, Education and Training (WF/JET) program requirements and terminate her Family Independence Program (FIP) benefits in February, 2009?

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 determined to be a mandatory WF/JET program participant, when she began having attendance problems with WF/JET. The claimant did not meet her mandatory job search hours for the week of January 9, 2009. The claimant failed to turn in her

Job Search Daily Employer Contact Log on January 16, 2009, as she didn't attend WF/JET. The claimant did not participate in her job search activities after January 16, 2009 (Department Exhibit #7 – 9).

2. The claimant called the department on January 23, 2009, January 29, 2009 and February 5, 2009 to report some family problems she was having that interfered with her WF/JET participation. Each time the department attempted to return the claimant's phone call, no one answered (Department Exhibit #10 - 12).

3. The department mailed the claimant a Notice of Noncompliance (DHS-2444) on February 2, 2009, setting a triage for February 13, 2009 (Department Exhibit #3).

4. The triage was held on February 13, 2009, and the claimant did attend. No good cause was found for the claimant's nonparticipation as the claimant didn't have policy reports or documentation of the "crisis situations" she was claiming (Department Exhibit #6).

5. The department worker called the [REDACTED] to attempt to obtain information on the claimant's claims of domestic violence. The police department faxed every police report they had from the claimant covering the previous year. Of the three reports, only one has any bearing on this case. The police report indicates that the claimant came into the police department on February 17, 2009, and reported that the claimant's children's father came to her house on January 24, 2009, at approximately 2:00 am and began to kick and beat on her door and refused to leave until the police arrived at the scene (Department Exhibit #29 – 30).

#### 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.

### **Employed 40 Hours**

#### **Client Unit**

#### **Good cause includes the following:**

- . The person is working at least 40 hours per week on average and earning at least state minimum wage.
- . The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

### **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**

The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client’s disability or the client’s needs related to the disability. PEM 233A, pp. 3-4.

### **No Child Care**

The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client’s home or work site.

- . **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions.
- . **Reasonable distance.** The total commuting time to and from work and child care facilities does not exceed three hours per day.
- . **Suitable provider.** The provider meets applicable state and local standards. Also, providers (e.g., relatives) who are NOT registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. See PEM 704.
- . **Affordable.** The child care is provided at the rate of payment or reimbursement offered by DHS.

### **No Transportation**

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.

### **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. PEM 233A, p. 4.

### **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. Unplanned events or factors include, but are not limited to the following:

- . Domestic violence.
- . Health or safety risk.
- . Religion.
- . Homelessness.
- . Jail.
- . Hospitalization.

### **Comparable Work**

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

### **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. PEM 233A, pp.4-5.

### **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.



The claimant was required to participate in job search activities for her employment or self-sufficiency-related activities. The claimant does not dispute that she did not get in her required amount of hours every week. In fact, the department worker testified that the claimant did not attend or participate with WF/JET on January 5, 6, 9, 13, and 16 (2009). On many other days the claimant either signed in or out, but not both, which made it impossible to determine her exact hours (January 7, 8 12, 14 and 15, 2009).

Department policy indicates that failure to participate in employment or self-sufficiency-related activities is noncompliance with WF/JET program requirements. PEM 233A. Department policy excuses the noncompliance if the claimant has good cause for the noncompliance. Good cause is a reason or reasons for the noncompliance that are beyond the claimant's control. PEM 233A.

In this case, the claimant originally claimed at the triage solely that there were personal domestic issues with her children's father (See Department Exhibit #6). The department worker informed her several times to bring in a police report showing the domestic violence. The claimant did not bring any documentation of domestic violence to the triage appointment. The department went above and beyond their responsibilities and called the [REDACTED] [REDACTED] to obtain all police reports concerning the claimant from the last year. There were no reports of assaults or violence against the claimant's person. The only police report that had any relevance to the claimant's claims, was a police report filed on February 17, 2009, which allegedly occurred on January 24, 2009, at 2:00 am, in which the claimant indicated her children's father had come to her house and kicked and beat on her door (Department Exhibit #29 – 30). It is noted that the alleged date of this occurrence is well after the claimant's absences from WF/JET participation.

While the claimant did not raise the issue at the triage appointment, the claimant indicated that her car broke down on January 3<sup>rd</sup> or 4<sup>th</sup>. She indicates that she couldn't get it fixed right away and couldn't get a ride to WF/JET. However, the department worker testified that the claimant did not call concerning any car problems and also that the claimant could have been given bus tokens to get to WF/JET, as she was on a bus route.

The claimant also raised the issue of daycare during the hearing, although not raised at the triage. The claimant indicated that she missed some days as she didn't have daycare. However, department records show that the claimant called the department on December 12, 2008 and reported that her daycare provider had stopped watching her children on October 25, 2008 (See Department Exhibit #31). At that time, the claimant indicated to the department staff member that she was in the process of obtaining a new daycare provider. The department did not receive a new Child Development and Care (CDC) Application (DHS-4583) until January 27, 2009 (See Department Exhibit #31). The claimant participated all throughout December, 2008 and never reported daycare as a problem to her JET case manager. Further, the claimant's absences weren't consecutive days, as one might expect if daycare was an issue. Instead, she would attend for a day or two and then miss a day or two. So, clearly, someone was watching her children on the days she attended.

This Administrative Law Judge does not find that these reasons for the claimant's absences amount to good cause. Thus, the claimant is found to have been noncompliant with her WF/JET participation requirements.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that the claimant was noncompliant

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with WF/JET program requirements without good cause and properly terminated her FIP benefits in February, 2009.

Accordingly, the department's actions are AFFIRMED. SO ORDERED.

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

Date Signed: May 7, 2009

Date Mailed: May 8, 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:

