

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: 2009-16909

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 29, 2009

Kent 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 29, 2009. The claimant personally appeared and provided testimony, along with Tiffany Kinnebrew, a friend who watched the claimant's children. The record was left open until May 16, 2009, to allow the department and the claimant to submit additional information.

ISSUE

Did the department properly close the claimant's Family Independence Program (FIP) case due to Work First/Jobs, Education and Training (WF/JET) program noncompliance in March, 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 participant.
2. The claimant stopped participating with WF/JET on January 28, 2009

(Department Exhibit #10).

3. The department mailed the claimant a Notice of Employment-Related Noncompliance on February 26, 2009, informing the claimant a triage had been scheduled to address her noncompliance with WF/JET on March 9, 2009 (Department Exhibit #7).

4. The claimant did not attend the triage appointment (Department Exhibit #6).

5. No good cause was granted for the claimant's noncompliance (Department Exhibit #5).

6. The claimant's FIP case closed on March 10, 2009 (Department Exhibit #3).

7. The claimant submitted a hearing request on March 13, 2009.

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 a mandatory WF/JET program participant. The claimant attended WF/JET program orientation on January 5, 2009. According to WF/JET program case notes, the claimant stopped participating with WF/JET on January 28, 2009. The claimant provided documentation for her absences on February 2, 15, and 19, 2009 (see exhibit #10). No other documentation was provided by the claimant to WF/JET for her absences.

Department policy requires WF/JET participants to work or engage in employment and/or self-sufficiency-related activities. PEM 233A. Department policy indicates that noncompliance is failing to appear and participate with WF/JET and failing to participate in employment and/or self-sufficiency-related activities. PEM 233A. In this case, the claimant had not appeared and participated with WF/JET since January 28, 2009. This is noncompliance with the WF/JET program requirements. Department policy requires the department to schedule a triage appointment with the claimant to give her an opportunity to provide good cause for the noncompliance and avoid having her case sanctioned. PEM 233A. The triage appointment was scheduled for March 9, 2009, and the claimant did not call or appear for the meeting. The department had no evidence of good cause and the case was put into negative action and sanctioned (this was the claimant’s third instance of noncompliance, making her ineligible for the First Noncompliance Letter DHS-754).

The claimant indicates that she has good cause for her absences. The claimant provided a number of documents from doctor's offices and hospitals to show she was absent due to a family illness or injury. According to department policy, a debilitating illness or injury, or an immediate family member's illness or injury requiring in-home care by the client, can be good cause for noncompliance. PEM 233A. This Administrative Law Judge has examined the documents and finds that they do not provide good cause for the duration of her absences.

The claimant was diagnosed with scabies on February 2, 2009. While the claimant indicates that her WF/JET caseworker told her to take the week off, there is no documentation of that in the case notes. In fact, the documentation specifically states, "[REDACTED] provided documentation for 2/2/09. Attendance updated." If the caseworker had excused her for a week, it would have been noted in the case notes for this entry.

The claimant provided documentation for this hearing for doctors' appointments for February 15 and 19, 2009. These correspond to the WF/JET case notes that indicate the claimant provided documentation to her WF/JET caseworker for these two dates.

The claimant provided this Administrative Law Judge documentation for a [REDACTED] dermatologist appointment, which is not reflected in the WF/JET case notes. The claimant also provided documentation from a hospital visit for her daughter on [REDACTED]. The claimant's only other documentation was a slip from a doctor's office that indicated the claimant should be off work from March 6, 2009 through March 10, 2009.

The claimant testified that she did get notice of the triage appointment. The claimant testified that she didn't attend the triage appointment because she had surgery on [REDACTED]. The notice for the triage appointment states on it "IF YOU VERIFY THAT YOU HAD GOOD CAUSE, I WILL NOT CLOSE YOUR FIP. You cannot claim good cause after your case closes." The notice also states "you MUST attend a meeting to discuss your reasons for not

meeting employment-related activity requirements. If you cannot attend in person and want to participate in a phone conference with me and your Jobs, Education and Training Case Manager to discuss your reasons for not meeting employment-related activity requirements, please call you case manager...to set up a phone conference.” The claimant testified that she called about the triage appointment the week before it was scheduled because she was having surgery on March 6, 2009. The department representative testified that there was no telephone calls documented from the claimant, as would be normal practice.

However, even if this Administrative Law Judge accepts the claimant’s documentation that was not turned in prior to the case closure, she still does not account for all her absence from January 28, 2009 through the triage request of February 24, 2009. Thus, this Administrative Law Judge finds the claimant did not have good cause for the noncompliance with WF/JET program 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 the claimant's FIP benefits should be terminated due to WF/JET program noncompliance.

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 26, 2009

Date Mailed: May 27, 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:

