

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: 2009-16972  
Issue No: 1038; 3028  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
May 5, 2009  
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, an in-person hearing was held on Tuesday, May 5, 2009. The claimant personally appeared and testified with her boyfriend, [REDACTED] as a witness.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits and reduce her Food Assistance Program because of noncompliance with Jobs, Education, and Training (JET) employment related activities?

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 a recipient of FIP and FAP benefits, which required the eligible members in her household to participate with JET for 40 hours per week.

(2) On February 9, 2009, the claimant's boyfriend was exited from JET due to documentation fraud on his contact logs where he listed [REDACTED] on his contact log dated January 20, 2009 where he claimed he put in an application. The JET worker verified from the manager of [REDACTED] that an application from the claimant's boyfriend had not been received. In addition, the claimant's boyfriend listed [REDACTED] as a business listed in [REDACTED] when the business is located in [REDACTED] where he said that he left a message for the company as listed on his log on January 2, 2009. The JET worker verified that there was never a message left for the company by speaking with the owner. (Department Exhibit 1-1A, 2-2A, 2B, 2C)

(3) On February 9, 2009, the claimant was exited from the JET program for documentation fraud on her contact logs. The claimant stated on February 2, 2009 that she contacted [REDACTED] to collect information about employment. The JET worker verified that this business has been out of business for roughly over a year and when tried to call the number listed on the contact log, the number was disconnected.

(4) On February 5, 2009, the claimant listed [REDACTED] [REDACTED] where she spoke with a counter person and they were not accepting applications. The JET worker verified that this business has been out of business for roughly three years and also called a number listed in contact log by the claimant, which was disconnected. (Department Exhibit 1B)

(5) On January 27, 2009, the claimant listed [REDACTED] [REDACTED], where she spoke to Tom. The JET worker verified that there was no one by that name that worked there by talking to the manager, Helena. (Department Exhibit 1C, 2D-2G)

(6) On March 5, 2009, the DHS caseworker documented the claimant's boyfriend's record of noncompliance was documented where he committed documentation fraud on job contact logs. One year sanction applied due to documentation fraud. (Department Exhibit 3-3A)

(7) On March 5, 2009, the DHS caseworker documented a record of noncompliance where the claimant was exited for documentation fraud. (Department Exhibit 3B-3C)

(8) On February 9, 2009, the department caseworker completed a good cause determination, DHS-71, for the claimant and her boyfriend to determine that there was no good cause for not participating with JET activities. The claimant committed documentation fraud on job contact logs. One year sanction applied due to documentation fraud. (Department Exhibit 4-4A)

(9) On March 5, 2009, the department caseworker sent the claimant a notice that her FIP benefits were terminated and her FAP benefits would be reduced because of noncompliance with JET activities.

(10) On March 5, 2009, the department received a hearing request from the claimant, contesting the department's actions.

(11) During the hearing, the claimant and her boyfriend stated that they did complete the logs to the best of their abilities, but the businesses were trying to reopen and had subsequently failed, which is why the numbers were disconnected, and they felt that they would not do anything to put their benefits at risk, but that they were singled out for reprisals by the JET caseworkers because they complained about a JET worker relative raising money for a trip.

(12) During the hearing, the number for the [REDACTED] was called where it rang without it being sent to voicemail, which would not have allowed the claimant's boyfriend to leave a message.

## 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).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

### **Timing of JET Referral**

Mandatory JET clients must be sent to JET upon application for FIP. Do not send any others to JET at application, unless a deferred client volunteers to participate. All JET referrals must be sent through ASSIST. ASSIST will generate an automated DHS-2439, Michigan Works Referral to the Michigan Works! Agency's (MWA's) Management Information System (MIS) upon completion of the initial interview in ASSIST. Clients can reapply for FIP at any time after their application is denied for failing to appear or participate with JET.

### **FAST and FSSP Notice**

All clients including mandatory JET participants will receive an automated notice upon completion of the initial interview in ASSIST.

### **JET Appointment Notice and JET Attendance Requirements**

**Exception:** Use the DHS-4785, JET Appointment Notice at **application** to schedule an appointment for each mandatory JET participant. Include the date, time and location to appear for their JET assignment. When assigned, clients must engage in and comply with all JET assignments while the FIP application is pending. JET engagement is a condition of FIP eligibility. PEM 229, p. 2.

Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits, if upon the day of case processing the client is in noncompliance with JET. Use ASSIST denial code 463 and CIMS denial code 210 for clients denied FIP benefits for noncompliance while the application is pending. Retain a copy of the appointment notice in the case record. Do not penalize Food Assistance when a client fails to attend JET as a condition of eligibility when the noncompliant person is not active FIP on the date of the noncompliance. Clients must be active FIP to apply a FIP penalty to the FAP case.

**Exception:** You must manually provide ineligible grantees and Disqualified Aliens a DHS-1535, FAST Notice, at intake or at review if not completed during the intake process. Enter the FAST notice date on the Family Self-Sufficiency Plan (FSSP) for tracking purposes. PEM 229, p. 2.

### **LEGAL BASE**

#### **FIP**

MCL 400.57, et. seq.

#### **RAP Cash**

45 CFR 400.75(a)

## **DEPARTMENT PHILOSOPHY**

### **FIP, RAP Cash**

Department of Human Services (DHS) assists families in becoming self-supportive. By involving the adult members of the household in employment and/or self-sufficiency-related activities leading to self sufficiency, we help restore self-confidence and a sense of self-worth. PEM 230A, p. 1.

## **DEPARTMENT POLICY**

### **FIP, RAP Cash**

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds **not** in high school full-time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and to find employment. Apply FIP policy to RAP cash clients unless a separate RAP cash policy is mentioned.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG), Michigan Works System. The individual sites where clients report are the Michigan Works! Agency's (MWA's). The JET program serves employers and job seekers to ensure that employers have skilled workers and workers have good jobs that provide economic self-sufficiency.

A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1.

## **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.

#### **Refusing Suitable Employment**

- . Refusing suitable employment means doing **any** of the following:
  - .. Voluntarily reducing hours or otherwise reducing earnings.
  - .. Quitting a job (see exception below).

**Exception:** This does NOT apply if:

- (a) The MWA verifies the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.
- (b) A teen parent or dependent child quits a seasonal job to return to a high school or GED program.
- .. Firing for misconduct or absenteeism (not for incompetence).



**Note:** Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

- .. Refusing a bona fide offer of employment or additional hours up to 40 hours per week. A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent.

**Exception:** Meeting participation requirements is NOT good cause for refusing suitable employment, unless the employment would interfere with approved education and training.

Do NOT penalize applicants or member adds that refused employment more than 30 days prior to the date of application or date of member add. PEM 233A, pp.2-3.

## **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 AT APPLICATION**

Noncompliance by a WEI while the application is pending results in **group** ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending must have benefits delayed. See “**Benefit Delay for Refusing Employment**” below.

#### **Benefit Delay for Refusing Employment**

If a WEI applicant refuses suitable employment without good cause while the FIP application is pending (**or up to 30 days before the FIP application date**), approve FIP benefits no earlier than the pay period **following** the pay period containing the 30<sup>th</sup> day after the refusal of employment. Record the good cause determination on the DHS-71, Good Cause Determination.

If a WEI member add refuses suitable employment without good cause while the FIP member add is pending, close the FIP for the minimum number of penalty months. PEM 233A, p. 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.

### **Work Around For Noncompliant Member Adds**

You must follow the instructions below when a member add is **noncompliant** with JET prior to being added to the FIP case:

- . Schedule a triage (DHS-2444) with the noncompliant member and send a manual DHS-176, Client Notice, to the grantee for negative action/closure due to noncompliance. Use the language for either negative action code “405” or “407”.
- . Hold the triage.
- . If good cause exists, no further action is required; add the member.
- . Central office will immediately close the case on the closure date or pend for the date on the DHS-176. PEM 233A, pp. 12-13.

### **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.

### **REAPPLICATION AND REINSTATEMENT**

There is no minimum sanction period on applications denied due to noncompliance. If the noncompliance was for an applicant refusing **employment**, see “Benefit Delay for Refusing Employment”. Clients may reapply at any time. All other penalties for noncompliance must be in effect for the minimum number of months of the penalty.

## **DEPARTMENT PHILOSOPHY**

DHS requires clients to participate in employment and/or self-sufficiency-related activities and to accept employment as required. There are consequences for a client who refuses to participate in employment and/or self-sufficiency-related activities or refuses to accept employment without good cause.

## **DEPARTMENT POLICY**

The policies in this item are for all Food Assistance Program (FAP) applicants and recipients. Noncompliance with employment requirements for FIP (see PEM 233A) affect FAP if both programs were active on the date of the noncompliance. PEM 233B, p. 1.

### **When to Disqualify**

- . Disqualify a FAP group member for noncompliance when:
- . The client was active both FIP and FAP on the date of the FIP noncompliance, and
- . The client did not comply with FIP employment requirements, and
- . The client is not deferred from FAP work requirements (see DEFERRALS in PEM 230B), and the client did not have good cause for the noncompliance. PEM 233B, p. 1.

## **FAP REFUSING EMPLOYMENT**

**Non-deferred** adult members of FAP households must follow certain work-related requirements in order to receive Food Assistance Program benefits. PEM 233B, p. 2.

### **Working**

- . Disqualify non-deferred adults who were working when the person:
- . Voluntarily quits a job of 30 hours or more per week without good cause, or
- . Voluntarily reduces hours of employment below 30 hours per week without good cause, or

- . Is fired without good cause from a job for misconduct or absenteeism (i.e., not for incompetence). Misconduct sufficient to warrant firing includes any action by a worker that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.
- . **Note:** If the job quit, reduction in hours or firing occurred **more** than 30 days **prior** to the application date, no penalty applies. PEM 233B, pp. 2-3.

### **Not Working**

Non-deferred adults who are **not** working or are working less than 30 hours per week must:

- . Accept a bona fide offer of employment  
**Note:** A **bona fide offer of** employment means a definite offer paying wages of at least the applicable state minimum wage.
- . Follow through and participate in activities required to receive unemployment benefits (UB) if the client has applied for or is receiving UB.  
**Note:** Determine good cause before implementing a disqualification. PEM 233B, p. 3.

### **WIA AND OTHER EMPLOYMENT & TRAINING PROGRAMS**

You may **not** disqualify Food Assistance Program applicants or recipients for failing to comply with Workforce Investment Act (WIA) services or any other FAP employment and training component you suggest. PEM 233B, p. 3.

### **MEMBER DISQUALIFICATION**

Disqualification for failure to comply without good cause are the same for FAP applicants, recipients and member adds. Evaluate each client's work requirement before imposing a disqualification. See PEM 230B "DEFERRALS".



- . For the first occurrence, disqualify the person for one month or until compliance, whichever is longer.
- . For a second or subsequent occurrence, disqualify the person for 6 months or until compliance, whichever is longer.
- . Count any previous FIP- or RAP-related FAP penalty as a first or subsequent occurrence. PEM 233B, p. 3.

### **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 refrain 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.

## **RE-ESTABLISHING FAP ELIGIBILITY**

A noncompliant person must serve a minimum one-month or six-month **disqualification** period unless one of the criteria for ending a disqualification early exists.

End the disqualification early if the noncompliant person:

- . Complies with work assignments for a cash program, or
- . Obtains comparable employment in salary or hours to the job which was lost, or
- . Meets a deferral reason other than unemployment benefit (UB) application/recipient (see "DEFERRALS" in PEM 230b), or
- . Leaves the group.

When you learn and verify that the person has met any of the criteria above after a disqualification has actually taken effect, restore benefits beginning the month **after** the noncompliant person reports meeting the criteria.

If the noncompliant person does not meet the criteria above for ending a disqualification early, a five-day, 20-hour compliance test must be completed before eligibility is regained. However, the minimum disqualification period must be served.

If the disqualification caused FAP closure, and all eligibility criteria are met, open the case effective the **later** of:

- . The date the person agreed to comply, or
- . The day after the disqualification ended, or
- . The date of application. PEM 233B, pp. 6-7.

### **Compliance Test**

After a one-month or six-month disqualification, the noncompliant person must complete a compliance test to become eligible for FAP, **unless**:

- . Working 20 hours or more per week, or
- . Meets FAP deferral criteria (see “DEFERRALS” in PEM 230B).

When a disqualified client indicates a willingness to comply, provide an opportunity to test his/her compliance. Arrange for testing within 10 workdays of the contact, provided it is no earlier than one month before a minimum disqualification period ends. ASSIST reassigns the case if appropriate.

The test consists of five days of employment and/or self-sufficiency-related activities totaling 20 hours. A client may elect to do the test with a community service agency. If so, just verify participation.

Local offices have latitude in the design of compliance tests. Examples of activities include:

- . Community services
- . Work experience.

- Applying for three jobs within 10 days. Use the DHS-402, “FAP Compliance Letter and Job Application Log.”
- Other employment and/or self-sufficiency-related activities.

If the person completes the test, recalculate the group’s FAP benefit amount with him/her included. PEM 233B, p. 7.

### **LEGAL BASE**

Food Stamp Act of 1977, as amended.  
R 400.3610 and 7 CFR 272 and 273.5  
FIP 1939 PA 280

In the instant case, the claimant and her boyfriend are recipients of FIP and FAP benefits, which require them to participate with JET activities to work or look for work for 40 hours per week. The claimant and her boyfriend are required to submit documentation logs that document where they have gone in search for work, inquired about work, or submitted applications.

The JET caseworker verified the information on the logs submitted by the claimant and her boyfriend on January 20, 2009 to determine that the claimant and her boyfriend had committed documentation fraud, which resulted in claimant and her boyfriend being exited from the JET program on February 9, 2009. (See Findings of Fact 2, 3, 4, 5)

The Administrative Law Judge finds that the claimant and her boyfriend were in noncompliance with JET activities when they committed documentation fraud on their logs dated January 28, 2009. The department has established that the claimant’s FIP benefits should be terminated for one year because of the penalty because this is the third and fourth act of noncompliance and that claimant’s FAP benefits should be reduced accordingly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant failed to establish a good cause reason for her failure to participate in mandatory JET activities.

Accordingly, the department's action is **AFFIRMED**.

/s/  
Carmen G. Fahie  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: July 7, 2009

Date Mailed: July 7, 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.

CGF/vmc

cc:

