

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: 2009-19349

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 21, 2009

Dickinson County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on May 21, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly sanction claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency 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) Claimant was an ongoing recipient of Family Independence Program (FIP) benefits. Claimant was temporarily deferred from participation in the Work First/Jobs, Education and Training Program (JET).

(2) On December 5, 2008, claimant was referred to Michigan Rehabilitative Services (MRS).

(3) On December 23, 2008, claimant attended a consultation at Michigan Rehabilitative Services (MRS). The MRS worker recorded that claimant feels he is not able to work and is not interested in MRS.

(4) On March 12, 2009, claimant's medical information was sent to the Medical Review Team for a determination regarding claimant's ability to participate in work related or self-sufficiency activities.

(5) On March 27, 2009, the Medical Review Team determined that Claimant is work ready with limitations.

(6) On April 2, 2009, claimant was sent a Work First/Jobs, Education and Training Appointment Notice (DHS-4785 form). Claimant was required to attend on April 7, 2009.

(7) On April 7, 2009, claimant did not attend the Work First/Jobs, Education and Training Program (JET). Claimant was sent a Notice of Non-Compliance (DHS-2444). The notice scheduled a meeting for April 15, 2009.

(8) On April 10, 2009, claimant submitted a request for 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 (formerly known as the Family Independence Agency) 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 provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

**FAILURE TO MEET EMPLOYMENT AND/OR
SELSUFFICIENCY-RELATED REQUIREMENTS:**

FIP

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

All Work Eligible Individual (WEI) and adult non-WEIs (except ineligible grantees, clients deferred for lack of child care (DC) and disqualified aliens), see PEM 228, who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

Depending on the case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).
- Case closure for a minimum of three or 12 months.

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency-related activities is subject to penalties. For more about penalties refer to:

- [PEM 233A](#) - FIP-related penalties.
- [PEM 233C](#) - RAP Cash penalties.

See [PEM 230B](#) and [PEM 233B](#) for FAP employment requirements.

REASONABLE ACCOMMODATION

Disability Definition

Section 504 of 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. 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 program 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.

A disability as defined above that requires reasonable accommodation 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. Also inform the client s/he will 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.

Accommodation

When information provided by an appropriate source indicates the need for reasonable accommodation do the following:

- Obtain a DHS-54A, Medical Needs form from a qualified medical professional listed on the form.
 - Consult Michigan Rehabilitation Services (MRS) if additional information about appropriate accommodations is needed or when you need advice.
 - Document the accommodation in the “Case Notes” section of the DHS-2439, JET Referral and on the FSSP. Modifications or extra help may include, but are not limited to the following:
 - Reduced hours of required participation;
 - Extended education allowances including more than 12 months allowed for vocational education;
 - Extended job search/job readiness time limit; or
 - Participation in MRS in lieu of other employment services.
- Justification for a plan including reasonable accommodation is documented in the client’s FSSP and the Individual Service Strategy (ISS with the MWA).

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.

MANDATORY PARTICIPATION IN EMPLOYMENT SERVICES

All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in other employment-related services. WEIs who are temporarily deferred are required to participate in activities that will assist in overcoming barriers and prepare them for employment or referral to an employment services provider.

MANDATORY PARTICIPANTS DELAYED REFERRAL TO EMPLOYMENT SERVICES

WEIs meeting one of the following criteria are only temporarily not referred to an employment service provider because they may continue to count in the state's federal work participation rate. They are required to participate in activities that will increase their full potential, help them overcome barriers and prepare them for employment or referral to an employment services provider as soon as possible.

If the WEI refuses or fails to provide verification of a deferral when required, refer him/her to JET.

Notify the MWA/JET service provider immediately by phone or email when a client who was previously referred is granted a temporary deferral.

MRS Clients

Clients Referred by DHS In cases where FIP clients are receiving services from Michigan Rehabilitation Services (MRS), FIP defers to the MRS plan for the clients, and fully counts the individuals as engaged in work activities if they are meeting their MRS work plan. Clients with disabilities must be afforded the same program benefits as all clients, and this includes the right to participate in program activities. Equal recognition of their participation, regardless of the disability, is a consideration of their right to equal program benefits.

Refer to "Long Term Incapacity" later in this item when clients claim they are unable to work due to a medical condition lasting longer than 90 days and to "Short Term Incapacity" when a client claims they are unable to work due to a condition lasting less than 90 days.

Clients Referred by MWA The MWA may refer a client to MRS for services to remove a barrier or enhance a work skill. A client referred to MRS by the MWA may be assigned additional activities through the MWA. When a client is referred to MRS by the MWA, the MWA remains the monitoring agency. Clients

served by MRS will be required to participate in all activities assigned by both MWA and MRS.

Disability

Defer the following:

- Recipients of RSDI based on disability or blindness.
- Persons found eligible for RSDI based on disability or blindness who are in non-pay status.

FSSP Data Entry

Assign clients to self-sufficiency or barrier removal activities as medically permissible. Enter these activities on the FSSP in the “Other” activity category listed under the “Goals and Activities” tab.

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 MD/ DO. Set the medical review date in CIM accordingly, but not to exceed three months.

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

Do not advise clients with a short-term incapacity to apply for SSI.

FSSP Data Entry

Assign clients to self-sufficiency or barrier removal activities as medically permissible. Enter these activities on the FSSP in the “Other” activity category listed under the “Goals and Activities” tab.

Long-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity expected to last more than 90 days and preventing their participation in employment-related activities. Clients in this category may be referred to Michigan Rehabilitation Services (MRS) or the Commission for the Blind for consultation and may be eligible for ongoing services from those agencies. This includes:

- An individual with low intellectual capacity or learning disabilities that impede comprehension and prevent success in acquiring basic reading, writing, and math skills, including, but not limited to, an individual with an intelligence quotient less than 80.
- An individual with documented chronic mental health problems that cannot be controlled through treatment or medication.
- An individual with physical limitations on his or her ability to perform routine manual labor tasks, including, but not limited to, bending or lifting, combined with intellectual capacity or learning disabilities.

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

- If the verification indicates the disability will last 90 days or less see Short Term Incapacity in this item.
- If the verification indicates the disability will last longer than 90 days:
 - Set the employment code to IN in ASSIST.
 - Enter medical review date for a three-month follow up.
 - Have the client sign a DHS-1555E, Release of Information.
 - Request a consultation from MRS or the Commission for the Blind, whichever is appropriate by completing Section I on a DHS-517, Consultation Request form. Note any reasonable accommodations that MRS should provide to ensure that the client has an equal opportunity to benefit from the referral.
 - Use locally established procedures for referral to the MRS that services your local office.

The MRS or the Commission for the Blind consultation must be requested before FIP can be opened or redetermination can be certified. Once the consultation has been requested FIP may be opened. The FIS must follow up with the consultation and take appropriate action when the response is received.

Discuss with your client the expectations of adult FIP clients who claim a disability. Inform client if they expect to be disabled longer than 90 days they may be receiving an appointment to talk to a

counselor from MRS or the Commission for the Blind, which they will be required to attend instead of going to JET.

Consultation Response Within 45 days of the request MRS or the Commission for the Blind will:

- Schedule an appointment with the client.
- Complete a consultation.
- Complete Section II of the DHS-517 and send back to the FIS with their recommendation.

DHS Action on Returned DHS-517 When the DHS-517 is returned, take action depending on the response as indicated below:

1. Client did not appear for appointment.

- Follow Noncompliance with Employment and/or Self-Sufficiency-Related Activities in PEM 233A.

2. Client was provided information on employment services.

- The “YES” box will be checked if MRS or the Commission for the Blind has had the opportunity to talk with the client regarding employment opportunities, accommodations, etc. which would facilitate the client’s obtaining and maintaining employment.

- The “NO” box will be checked if the client was not responsive to employment information and gave no indication that employment was an option for them. If this box is checked follow #4.

3. Client wants to apply for MRS or the Commission for the Blind services.

- Employment code remains IN in ASSIST.
- MRS or the Commission for the Blind will keep the client as a referral.
- Continued participation must be verified at each redetermination.

- If the client does not participate as required, MRS or the Commission for the Blind will contact DHS to schedule a triage meeting for noncompliance. See Noncompliance with Employment and/or Self-Sufficiency Related Activities in PEM 233A.

FSSP Data Entry Select **Other** activity under the Goals & activities tab. Select MRS and enter a begin date. Schedule the target date to match the case review date.

4. Client does not feel they are capable of employment at this time.
 - Employment code remains IN in ASSIST.
 - Set Medical Review Date for three-month follow up.
 - Request a utilization report (UT) from the program office. See Request a Utilization Report later in this section.
 - Obtain a medical determination from MRT. Follow instructions in PAM 815, Medical Determination and Obtaining Medical Evidence.
 - On the DHS-49A, Medical-Social Eligibility Certification, under program, check JET.
 - Complete the DHS-49-A-E, Medical Assessment For JET Participation Project and attach to the top of the client's medical packet.

MRT Decision

Take action below that pertains to the decision rendered by the MRT. ALL DECISIONS REVIEW the medical records and information provided by MRT to determine what accommodations, other than deferral from JET, the client needs to be able to benefit from the FIP program and to pursue employment and or self-sufficiency related activities. Follow the procedure for accommodating disabilities in [Reasonable Accommodation](#) in this item.

Work ready with limitations:

Do not require the client to apply for RSDI/SSI.

- Set employment code to WF in ASSIST.
- Refer to JET. Identify the clients limitations using additional information codes and case notes on the DHS-2439 when the referral is made to JET.

Clients served by the Department of Human Services

DHS may serve clients who have been determined work ready or work ready with limitations by the MRT if the client cannot be served by MWA. DHS may assign self-sufficiency activities up to the medically permissible limit of the client.

In this case, claimant asserts he is disabled and cannot do what Work First would require of him, disagrees with the conclusions of his doctors, and asserts that the MRS Representative told him there is nothing they can do for him. Claimant does not dispute that he chose not to participate with Michigan Rehabilitative Services (MRS) or attend the Work First/Jobs,

Education and Training Program (JET). Claimant submitted one additional medical statement and a modified medical statement already in the record. Neither the new statement nor the revised statement provides any limitation not already considered by the Medical Review Team.

With regard to any participation requirements for claimant, neither MRS nor Work First had an opportunity to determine what claimant's participation requirements would be.

Claimant's assumption that he cannot meet any participation requirements has no factual basis and is not good cause for his failure to participate in employment and/or self-sufficiency related activities.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly sanction Claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 22, 2009

Date Mailed: May 29, 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.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

GFH [REDACTED]

cc:

[REDACTED]