

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: 2009-19783
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 11, 2009
Allegan 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, a telephone hearing was held on Tuesday, August 11, 2009. The claimant personally appeared and testified with her friend, [REDACTED] and [REDACTED].

ISSUE

Did the department act in accordance with department policy when it took action to close the claimant's Family Independence Program (FIP) case due to the claimant's refusal to cooperate with the required Jobs, Education, and Training (JET) 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 benefits, which required her to participate in JET activities.

(2) On February 23, 2009, the department caseworker was notified by the JET worker that the claimant was being referred to triage due to unexcused absences. (Department Exhibit 3-7)

(3) On February 23, 2009, the department caseworker sent the claimant a Notice of Noncompliance that on February 19, 2009 the claimant had an unexcused absence which required a triage on March 5, 2009. (Department Exhibit 1-2)

(4) During the triage meeting on March 5, 2009, the claimant produced a prescription bottle as proof of her doctor's appointment. The claimant reported that the reason she had missed the other days was due to the fact that she was home trying to research whether her child's father was killed or not. The claimant was not granted good cause for her JET absences and her case was pended to close on March 9, 2009.

(5) On March 5, 2009, the department caseworker sent the claimant a notice that she did not have good cause for not participating with the JET program. (Department Exhibit 8-10)

(6) On March 16, 2009 and March 23, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(7) During the hearing, the claimant testified that she was ill, but did not provide her JET or DHS worker with a doctor's note.

(8) During the hearing, the claimant stated that she was working with a domestic shelter and a worker because of domestic violence issues.

(9) During the hearing, the department caseworker said that there was no evidence in the file that the claimant was working with a domestic violence shelter and that the claimant had not provided any written verification.

(10) During the hearing, [REDACTED], stated that the claimant started working with their agency on [REDACTED] with a previous referral that the claimant was working with [REDACTED] from [REDACTED].

(11) During the hearing, the claimant's friend stated that the claimant was sick on February 19, 2009 and that she took her to her house.

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 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 30th 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.

In the instant case, the Administrative Law Judge finds that the claimant did not have good cause for missing her JET training on February 19, 2009. The JET policy is very specific about what you have to do if you miss a day and what the consequences are. Although the claimant stated that she was sick and her friend verified this, the claimant did not have a doctor’s note to provide written verification that she was sick. The claimant was a no-call, no-show on February 19, 2009.

At the March 5, 2009 triage meeting, the claimant stated that she was sick and produced a prescription bottle as proof of her doctor's appointment. A prescription bottle is not proof of a doctor's appointment. The claimant needed to provide a note from her doctor stating that she had an appointment and that she was sick on that day, which is what is required by JET policy. The claimant also reported that the reason that she missed the other days was due to the fact that she was trying to research whether her child's father was killed or not. The department caseworker had no evidence that the claimant was having domestic violence issues, which if she had applied, could have had an exemption if she had domestic violence issues and was working with a shelter. Even though the advocate from the [REDACTED] stated that the claimant was working with her organization since [REDACTED] with a note in the file that she was participating with another domestic violence shelter called [REDACTED]. This hearing is about whether or not the department followed policy based on the information that was provided to the department at that time. The department had no written verification, as is required by policy, that the claimant was having domestic violence issues or proof that she went to the doctor because she was sick on February 19, 2009.

This Administrative Law Judge determined that the department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that the claimant did not have good cause for not participating in JET activities that resulted in her FIP case being closed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established its case by a preponderance of the evidence.

The department's decision to cancel the claimant's FIP benefits based upon her not having good cause for not participating in JET activities.

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

/s/

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

Date Signed: September 2, 2009

Date Mailed: September 2, 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:

