

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: 2009-21749
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2009
Allegan 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 June 30, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine the claimant's Family Independence Program (FIP) case should be closed for Work First/Jobs, Education and Training (WF/JET) program noncompliance in April, 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 mailed a WF/JET Appointment Notice (DHS-4785) on February 17, 2009, scheduling the claimant to attend orientation on March 4, 2009. The form indicates "last medical information regarding your inability to work or work with restrictions

was received on 1/06/09 by Kalamazoo County DHS. Doctor's note supplied states that you were unable to work for 4 – 6 weeks from 12/31/08....New medical documentation is needed in order to determine whether or not you are able to work or to work with restrictions....If you are unable to work or work with restrictions, please make sure you bring your medical documentation with you to your 2nd scheduled appointment on 2/27/09. If no medical documentation...is received by DHS before you are scheduled to attend [WF/JET], you will be required to attend as scheduled.” (Department Exhibit 1).

2. On March 3, 2009, [REDACTED] faxed a statement from [REDACTED] that excused the claimant from work until March 9, 2009. (Department Exhibit 3).

3. The claimant was mailed a WF/JET Appointment Notice (DHS-4785) on March 9, 2009, scheduling the claimant to attend WF/JET orientation on March 18, 2009. This form states that the medical documentation only excuses the claimant from WF/JET until March 9, 2009. The claimant was informed that if a longer deferral was needed, the claimant would have to submit additional information from her physician regarding an inability to work. The form further stated that if the documentation was not received prior to March 18, 2009, the claimant would have to attend WF/JET as scheduled. (Department Exhibit 4)

4. The claimant was mailed a Medical Needs form (DHS-54A) and a Medical Examination Report (DHS-49) along with the WF/JET Appointment Notice, to allow the claimant to get the medical forms completed, if necessary. (Department Exhibits 6 – 8)

5. The claimant did not attend WF/JET orientation on March 18, 2009 and did not provide medical documentation. The claimant was mailed a Notice of Noncompliance (DHS-2444) on March 23, 2009, scheduling a triage appointment for April 2, 2009. (Department Exhibit 9).

6. On March 30, 2009, the department received a fax from the [REDACTED] which indicated that the claimant had told the doctor that she had overdosed on multiple medications on 3/27/09 and that she should be excused from work. (Department Exhibit 11 – 16).

7. A triage was conducted by telephone with the claimant on April 2, 2009. The department asked the claimant why she didn't attend her March 18, 2009 doctor's appointment and the claimant stated that she had to reschedule due to transportation issues. The only medical documentation received for the claimant was dated on March 30, 2009, covering a time period after the noncompliance. No good cause was granted to the claimant for her noncompliance. The claimant was informed that she would have until April 4, 2009 (case closure date) to provide any medical verification for the noncompliance time period. (Department Exhibit 17 – 18).

8. Some medical documentation was received on April 15, 2009, but the FIP case closure had already occurred.

9. The claimant submitted a hearing request on April 28, 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.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-related activities, etc. PEM 233A. In this case, the claimant admits that she did not attend the WF/JET program orientation. This is a failure to attend and participate with WF/JET and is, therefore, noncompliance.

The claimant indicates that she believes she had good cause for her noncompliance. Good cause is defined as 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. PEM 233A. The claimant indicates that she has medical reasons for not being able to attend WF/JET. However, medical documentation was not provided to WF/JET in a timely fashion.

The claimant's medical excuse from WF/JET ended on March 9, 2009. Because the claimant was no longer medically deferred, the department scheduled her for a WF/JET orientation. The appointment notice was sent on March 9, 2009, along with medical forms, and specifically informed the claimant that if she did not provide additional medical documentation excusing her from work, she would have to attend WF/JET. The claimant was instructed to provide the medical documentation by March 18, 2009, or she would have to attend WF/JET. The claimant did not provide any medical documentation by March 18, 2009 and she failed to attend WF/JET.

Prior to the triage appointment, the claimant provided a doctor's excuse, beginning on March 30, 2009. The doctor's note did not cover the noncompliance time period. Thus, the department determined the claimant did not have good cause for her failure to attend WF/JET.

The claimant was given one more opportunity to provide medical documentation to keep her case from closing. During the triage, the department informed the claimant that she could submit medical documentation covering the noncompliance period prior to the case closure on April 4, 2009. The claimant failed to do so. No other medical information was received until April 15, 2009.

The claimant testified that her doctor was on vacation for a week from approximately March 29 until April 4, 2009 and that this was the reason she was unable to get the medical documentation prior to her case closure. However, the claimant had been mailed the medical forms and told they were needed by the department on March 9, 2009. The claimant admitted in her triage appointment that she had not attended her March 18, 2009, doctor appointment. If the

doctor didn't leave on vacation until the end of March, the claimant should have had plenty of time to get an updated doctor's excuse prior to his vacation. Further, if a physician is out of the office, someone usually covers for that person and handles matters in their absence.

Thus, this Administrative Law Judge does not find that the claimant's reason for nonparticipation equates to good cause as contemplated by department policy. The department properly followed policy as there was no medical documentation supporting any reason for noncompliance with WF/JET attendance.

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 was noncompliant with WF/JET program requirements without good cause and properly determined her FIP case should be terminated.

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

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

Date Signed: August 3, 2009

Date Mailed: August 3, 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 [REDACTED]

cc:

[REDACTED]