

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: 2009-22007
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2009
Calhoun 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 May, 2009?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant was determined to be a mandatory WF/JET program participant, with a requirement of 30 hours per week.

2. The claimant attended WF/JET orientation on February 17, 2009. The claimant signed the WF/JET Requirements Update at that time. The requirements clearly indicate that all participants are required to sign in EVERY Tuesday between 8:00 am and 11:30 am. This form also indicates that noncompliance includes failure to turn in job leads sheets on time and failure to provide documentation of education or community service hours. (WF/JET Exhibit 1, page 1).

3. The claimant was attending [REDACTED] part-time. (WF/JET Exhibit 1, page 2).

4. On February 19, 2009, the claimant signed a form that indicated there were changes in the WF/JET policies and that she understood she was required to complete a weekly log and have her instructor verify her attendance and turn in the log to her WF/JET case manager each week. (WF/JET Exhibit 2).

5. The week of February 15, 2009, the claimant attended school for 14.53 hours. The claimant told WF/JET that she had put in 14 hours in massages. The claimant was informed to provide documentation of the massages by March 3, 2009, which was not provided. The claimant provided one job search site and was given two hours of credit for the job search. (WF/JET Exhibit 3, pages 1 – 3).

6. The week of February 22, 2009, the claimant attended school for 27.05 hours. The claimant was late turning in the documentation and did not provide it to the department until March 4, 2009. The claimant performed one job search on February 23, 2009, for two hours of credit, however, did not turn in the log until March 4, 2009. (WF/JET Exhibit 4, page 1 – 4).

7. The week of March 1, 2009, the claimant attended school for 15.97 hours. The claimant's school supervisor did sign to indicate that she performed some aromatherapy and

massages for 12 additional hours. The claimant also performed two job searches for four hours of credit. (WF/JET Exhibit 5, pages 1 – 3).

8. The week of March 8, 2009, the claimant attended school for 11.73 hours and her instructor indicated that she performed an additional nine hours of massages. The claimant also performed two job searches. The claimant turned in the documentation regarding her school and her job searching late, on March 19, 2009, thus the department did not give her credit for the hours. (WF/JET Exhibit 6, pages 1 – 3).

9. The week of March 15, 2009, the claimant attended school for 19.13 hours. Her school instructor also approved her for nine hours of massages. The claimant performed two job searches for the week. The claimant again turned in her documentation late, on March 25, 2009. (WF/JET Exhibit 7, pages 1 – 3).

10. On March 19, 2009, the claimant was in the WF/JET case manager's office and was warned to turn in her attendance and job searching documentation by Tuesdays at 11:30 am. (Department Exhibit 5).

11. The week of March 22, 2009, the claimant attended school for 8.95 hours. Her instructor approved her for an additional 10 hours of massages. The claimant performed 10 job searches for the week. The claimant again turned in her documentation late, on April 2, 2009. (WF/JET Exhibit 8, pages 1 – 3).

12. The week of March 29, 2009, the claimant attended school for 8.80 hours. The claimant's instructor also indicated she performed six hours of massages. The claimant also turned in ten job searches. However, the documentation of her school and job searches were both turned in late again on April 9, 2009, although the claimant submitted a letter with the documentation that indicated she couldn't turn the documentation in until Thursday, because she didn't have a sitter. (WF/JET Exhibit 9, pages 1 – 4).

13. The week of April 5, 2009, the claimant attended school for 8.02 hours. The instructor also approved her for six hours of massages. The claimant submitted the school hours on April 15, 2009, with a letter that stated she was short on hours because she didn't have power at her house and no sitter. (WF/JET Exhibit 10, pages 1 – 3).

14. The week of April 12, 2009, the claimant attended school for 23.32 hours. The claimant's instructor also approved her for nine hours of massages. The claimant turned in the documentation on April 20, 2009. (WF/JET Exhibit 11, pages 1 – 2).

15. The claimant twice called WF/JET on March 30, 2009 and April 13, 2009 and informed the WF/JET case manager that she could not turn in her documentation at that time because she was meeting with Ms. Davis at DHS regarding a State Emergency Relief (SER) application. However, once the WF/JET case manager spoke with Ms. Davis, it was discovered that there were no meetings between the claimant and Ms. Davis. (Department Exhibit 4 – 5).

16. The department produced the sign-in sheets for the front desk from both March 30, 2009 and April 13, 2009 and both show the claimant did not sign in to speak with anyone at DHS. (WF/JET Exhibit 15, pages 1 – 5).

17. The claimant was mailed a Notice of Noncompliance (DHS-2444) on April 23, 2009, scheduling a triage appointment for April 30, 2009. (Department Exhibit 1 - 2).

18. The claimant attended the triage appointment. No good cause was granted for the claimant's noncompliance and the case was scheduled to close on May 4, 2009. (Department Exhibit 1, 16).

19. The claimant submitted a hearing request on May 5, 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 department alleges the claimant was noncompliant because she failed to turn in her documentation by Tuesday at 11:30 each week, she failed to perform her required amount of hours and because she provided false information to turn in late documentation.

When the claimant's hours are added together, it becomes clear that she was not getting in the required amount of hours, even if all of her documentation that was turned in too late for credit, was counted. For example, the claimant only had 17 hours of participation for the week of February 15. The claimant informed WF/JET that she had provided 14 hours of massages for the week. The claimant was informed to provide verification of these massages by March 3, 2009, which she did not do.

Further, there are other weeks that the claimant did not participate for her required amount of hours, even if late documentation is considered. The week of March 8, 2009, the claimant only participated for 25 hours. The week of April 5, 2009, the claimant only participated for 15 hours and the week of April 12, 2009, she only participated for 13 hours.

However, the claimant didn't receive credit for multiple weeks of participation from WF/JET because she did not turn in her documentation by Tuesday at 11:30 am, as required. The claimant signed forms indicating she understood her requirement to turn in her school attendance and job search logs by Tuesday at 11:30 am. The claimant was also personally reminded of this requirement by her WF/JET case manager on March 19, 2009. (See finding of fact #10). The claimant repeatedly turned the documentation in past her deadline. WF/JET case notes and department testimony established that the claimant twice told her WF/JET case manager that she couldn't turn in the documentation at the appointed time because she was meeting with her DHS caseworker regarding a SER request (March 30 and April 13, 2009).

However, the department provided evidence that this was false. The WF/JET case manager had spoken with the DHS caseworker and she informed him that she had not ever met with the claimant on these two dates. This same DHS caseworker, JD, testified at the hearing that she had no meetings with the claimant on either of these dates. The department also provided documentation from the front desk that shows the claimant did not sign in to speak to anyone on either of these dates.

The claimant attempted to clarify her statements during the hearing. The claimant testified that she told the WF/JET case manager that she had tried to get a hold of her DHS worker regarding the SER issue, but that it was by telephone. However, this does not appear credible. The case notes made at the time of the occurrence specify that the claimant stated she had an appointment with her DHS worker, JD. If the claimant was just telephoning the worker, she could have attended WF/JET and provided the documentation. Thus, it does appear that the claimant provided false information to attempt to provide an excuse for her lateness in turning in the required documentation.

The claimant testified at this hearing that the reason she couldn't get her documentation in timely was because she couldn't get her school instructor to sign the attendance sheets by Tuesday at 11:30 am. However, in looking at the school documentation, this does not appear to be factual. The first attendance sheet is signed on February 23, 2009, the Monday prior to the claimant's due date. The second attendance sheet was signed by the claimant's instructor on March 2, 2009, again the day prior to the claimant having to submit the sheet. The claimant turned it in late. The third attendance sheet is signed by the instructor on March 10, 2009, the day she was supposed to turn it in. The next attendance sheet was signed on March 17, 2009, again the day she was required to turn in her documentation. The claimant did not turn it in until March 19, 2009. The next attendance sheet was signed by the instructor on March 24, 2009, the

day the documentation was due. The claimant didn't turn it in until March 25, 2009. The next attendance sheet was signed on March 31, 2009, the day the claimant was required to turn in the documentation, but the claimant didn't submit it until April 2, 2009. The next attendance sheet is dated April 6, 2009, the day prior to the documentation due date. The claimant didn't submit this documentation until April 9, 2009. The next attendance sheet is dated April 13, 2009, again the day prior to her due date. The claimant didn't turn in the sheet until April 15, 2009. The last attendance sheet was signed by the claimant's instructor on April 20, 2009, again the day prior to her due date to turn it in. The claimant did turn this one in on April 20, 2009.

Thus, it is apparent from the signed school attendance sheets, that the claimant could have gotten each of them in by Tuesday of each week. As this was a requirement of her WF/JET participation, the claimant failed to appear at her required time and provide documentation of her participation. This is considered noncompliance.

A noncompliance can be negated if the claimant has good cause for their actions. 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 provided no evidence of any good cause reasons for the noncompliance. Thus, this Administrative Law Judge finds the department acted properly in finding no good cause for the noncompliance.

It is noted that this is the claimant's third instance of noncompliance, thus, the department properly determined a 12-month penalty would apply.

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 and properly determined her FIP case should be terminated and sanctioned for a 12-month penalty.

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: July 9, 2009

Date Mailed: July 10, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SLK 

cc: 