

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: 2009-23922
Issue No: 1038; 3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Kalamazoo 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 July 1, 2009. Claimant appeared and testified.

ISSUES

(1) 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?

(2) Did the Department of Human Services properly sanction Claimant's Food Assistance Program (FAP) 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) and Food Assistance Program (FAP) benefits. Claimant's benefit group consists of himself and his 17 year-old child. Claimant was referred to Michigan Rehabilitative Services (MRS). Claimant indicated he does not feel he can do any form of work and did not wish to participate in Michigan Rehabilitative Services (MRS). Claimant's medical information was gathered and submitted to the Medical Review Team.

(2) On February 9, 2009, the Medical Review Team determined that Claimant is not disabled and is work ready with limitations. Claimant was referred to the Michigan Works Agency/Jobs, Education and Training Program (JET) and was required to participate in classes and job search activities for 30 hours per week.

(3) For the week ending March 8, 2009, Claimant did 2 hours of required activity.

(4) For the week ending March 15, 2009, Claimant did 0 hours of required activity.

(5) On March 23, 2009, Work First referred Claimant for a triage.

(6) On April 2, 2009, Claimant attended a triage meeting, signed a First Non-Compliance Letter (DHS-754), and agreed to participate 30 hours per week in the Jobs, Education and Training Program (JET) instead of having his benefit cases sanctioned.

(7) For the week ending April 5, 2009, Claimant did 24 hours of required activity.

(8) For the week ending April 12, 2009, Claimant did 6 hours of required activity.

(9) For the week ending April 19, 2009, Claimant did 0 hours of required activity.

(10) On April 22, 2009, Claimant did not participate in the Jobs, Education and Training Program (JET).

(11) On April 23, 2009, Claimant did not participate in the Jobs Education and Training Program (JET).

(12) On April 24, 2009, Work First referred Claimant for a triage.

(13) On April 29, 2009, Claimant was sent a Notice of Non-Compliance (DHS-2444).

The notice scheduled a triage meeting on May 7, 2009.

(14) On May 7, 2009, Claimant participated in the triage meeting. The Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.

(15) On May 8, 2009, Claimant was sent notice of the action on his Family Independence Program (FIP) and Food Assistance Program (FAP) cases.

(16) On May 19, 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.

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.

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:

Exception: Do not apply the three or 12 month penalty to ineligible caretakers, clients deferred for lack of child care (DC) and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

- 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.

Note: FIS should clear the FAST Fall Out Report and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST non-completion.
 - Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).

Note: FIS must have scheduled a FSSP completion appointment with the client and the client failed to attend before considering a client noncompliant for FSSP non-completion.
 - Comply with activities assigned to on the Family Self Sufficiency Plan (FSSP) or PRPFC.
 - Provide legitimate documentation of work participation.
 - 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.

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:

- The MWA verifies the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.
- 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.

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.

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.

A good cause determination is not required for applicants who are noncompliant prior to FIP case opening.

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.

Begin the sanction period with the first pay period of a month. Penalties are automatically calculated by the entry of noncompliance without good cause on the FSSP. This applies to active FIP cases, including those with a member add who is a WEI JET participant.

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 requirements 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.

HEARINGS

Expedited Hearings

Staff must identify cases for SOAHR (administrative hearings) when a client files a hearing based on closure due to noncompliance with an employment and/or self-sufficiency related activity. SOAHR has agreed to expedite these hearing requests in an effort to engage clients in a timely manner and improve the state's overall work participation rate.

Write "**Expedited Hearing E&T**" at the top of the hearing request so that it can be easily identified as a priority. Refer to PAM 600, "[Expedited Hearings](#)" for additional instructions.

Hearing Decisions

When a hearing decision is upheld for noncompliance, impose the penalty for the first full month possible for either 3 or 12 months. Do not recoup benefits.

PEM 233B FAILURE TO MEET EMPLOYMENT REQUIREMENTS: FAP

DEPARTMENT PHILOSOPHY

DHS requires participation in employment and/or self-sufficiency-related activities associated with the Family Independence Program (FIP) or Refugee Assistance Program (RAP). Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. There are consequences for client, who refuses to participate in FIP/RAP employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause.

DEPARTMENT POLICY

The policies in this item apply to all FAP applicants and recipients age 16 and over. Noncompliance, without good cause, with employment requirements for FIP/RAP (see [PEM 233A](#)) may affect FAP if **both** programs were active on the date of the FIP noncompliance.

Exception: See [PEM 233C](#) for FAILURE TO MEET EMPLOYMENT REQUIREMENTS: RAP CASH. RAP clients do not have the “Last RAP” budgeted on their FAP benefits, but can be disqualified from FAP.

Michigan’s FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following two situations:

- Client is active FIP/RAP and FAP and becomes noncompliant with a cash program requirement without good cause.
- Client is pending or active FAP only and refuses employment (voluntarily quits a job, is fired or voluntarily reduces hours of employment) without good cause.

At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP.

PROCESS FOR FIP/RAP

ASSOCIATED NONCOMPLIANCE

When you learn that a client is noncompliant do the following:

- Send the DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days of the

noncompliance. Check all programs that apply to the noncompliance (FIP/ RAP and/or FAP) and the related penalty count that applies to each as outlined on the form.

- Enter the appropriate negative action reason code for the penalty count that applies.
- Determine FAP good cause separately from the FIP/RAP based on FAP good cause reasons defined later in this item.
- Hold the triage appointment/phone conference and document the decision on the DHS-71, Good Cause Determination form.

Always make two determinations at the triage appointment/phone conference when a FAP participant fails without good cause to comply with a cash program employment-related activity or refuses suitable employment.

- Whether or not to disqualify the noncompliant person, and
- Whether or not to budget the Last FIP grant amount. (Never budget the Last RAP grant amount if the noncompliant person is RAP eligible.)

See **both** sections below for further guidance:

When To Disqualify

Disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP/RAP employment requirements, and
- The client is subject to a penalty on the FIP/RAP program, 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.

Budgeting “Last FIP/EFIP”

Budget the **Last FIP** grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the first two noncompliances or 12 months for the third and subsequent noncompliances) after the FIP case closes for employment and/or self-sufficiency-related noncompliance. The **Last FIP** grant amount is the grant amount the client received immediately before the FIP case closed.

Budget the **Last FIP** for three or 12 months whether or not the noncompliant person is disqualified from FAP. If a FIP penalty is imposed; you must budget the **Last FIP** grant amount. Budget the **Last FIP** amount only when the client was receiving FAP on the date of the FIP noncompliance.

If the client was only **applying** for FIP and violated a FIP employment and/or self-sufficiency-related requirement, the FAP grant would not be affected.

Note: If a noncompliant person leaves the home, the **Last FIP** remains budgeted for the duration of the FIP penalty.

Post a follow-up to remove the **Last FIP** grant from the FAP budget during the last penalty month applied on FIP.

PEM 233B FAILURE TO MEET EMPLOYMENT REQUIREMENTS: FAP

DEPARTMENT PHILOSOPHY

DHS requires participation in employment and/or self-sufficiency-related activities associated with the Family Independence Program (FIP) or Refugee Assistance Program (RAP). Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. There are consequences for client, who refuses to participate in FIP/RAP employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause.

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The policies in this item apply to all FAP applicants and recipients age 16 and over. Noncompliance, without good cause, with employment requirements for FIP/RAP (see [PEM 233A](#)) may affect FAP if **both** programs were active on the date of the FIP noncompliance.

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- Client is pending or active FAP only and refuses employment (voluntarily quits a job, is fired or voluntarily reduces hours of employment) without good cause.

At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP.

PROCESS FOR FIP/RAP

ASSOCIATED NONCOMPLIANCE

When you learn that a client is noncompliant do the following:

- Send the DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days of the noncompliance. Check all programs that apply to the noncompliance (FIP/ RAP and/or FAP) and the related penalty count that applies to each as outlined on the form.
- Enter the appropriate negative action reason code for the penalty count that applies.
- Determine FAP good cause separately from the FIP/RAP based on FAP good cause reasons defined later in this item.
- Hold the triage appointment/phone conference and document the decision on the DHS-71, Good Cause Determination form.

Always make two determinations at the triage appointment/phone conference when a FAP participant fails without good cause to comply with a cash program employment-related activity or refuses suitable employment.

- Whether or not to disqualify the noncompliant person, and
- Whether or not to budget the Last FIP grant amount. (Never budget the Last RAP grant amount if the noncompliant person is RAP eligible.)

See **both** sections below for further guidance:

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Disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP/RAP employment requirements, and
- The client is subject to a penalty on the FIP/RAP program, 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.

Budgeting “Last FIP/EFIP”

Budget the **Last FIP** grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the first two noncompliances or 12 months for the third and subsequent noncompliances) after the FIP case closes for employment and/or self-sufficiency-related noncompliance. The **Last FIP** grant amount is the grant amount the client received immediately before the FIP case closed.

Budget the **Last FIP** for three or 12 months whether or not the noncompliant person is disqualified from FAP. If a FIP penalty is imposed; you must budget the **Last FIP** grant amount. Budget the **Last FIP** amount only when the client was receiving FAP on the date of the FIP noncompliance.

If the client was only **applying** for FIP and violated a FIP employment and/or self-sufficiency-related requirement, the FAP grant would not be affected.

Note: If a noncompliant person leaves the home, the **Last FIP** remains budgeted for the duration of the FIP penalty.

Post a follow-up to remove the **Last FIP** grant from the FAP budget during the last penalty month applied on FIP.

PEM 230B EMPLOYMENT-RELATED ACTIVITIES: FAP

DEPARTMENT PHILOSOPHY

Department of Human Services (DHS) has a unique opportunity to assist families in becoming strong, viable, participative members of the community. By involving the adult members of the household in employment-related activities, we help restore self-confidence and a sense of self-worth. These are cornerstones to building strong, self-reliant families. The goal of the Food Assistance Program is to ensure sound nutrition among children and adults. In addition, the goal of our employment-related policies for FAP households is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training.

DEPARTMENT POLICY

Use this item to determine work-related activities and deferrals for FAP clients.

Also use this item when FIP or RAP closes for any reason other than a penalty or disqualification. The items listed below must be used when FIP or RAP closes due to noncompliance and a penalty or disqualification is imposed. If the noncompliant client:

- Received FIP and FAP on the date of noncompliance, see PEM 233B.
- Received RAP and FAP on the date of noncompliance, see PEM 233C.
- Did not receive FIP or RAP on the date of noncompliance, see PEM 233B.

DEFERRALS

Clients meeting one of the criteria below are temporarily deferred from employment-related activities.

Age

Defer a person who is:

- Under age 16 or at least age 60; **or**
- A 16- or 17-year old who is **not** the grantee; **or**
- A grantee age 16 or 17 who
 - Lives with a parent or person in that role, **or**
 - Attends school at least **half time**, **or**
 - Is enrolled in an employment/training program at least **half time**.

Care of a Child

Defer one person who personally provides care for a child under age 6 who is in the FAP group.

Care of Disabled Household Member

Defer one person who personally provides care for a disabled member of his/her own FAP group.

Disability

Defer persons incapacitated due to injury, physical illness or mental illness.

Education

A student enrolled at least **half time** in any recognized school, training program or institution of higher education meets the employment related activities requirement. This includes persons attending school for GED or adult high school completion.

Pregnancy

Defer pregnant women, beginning the **seventh** month of pregnancy **or** earlier if a pregnancy complication is medically documented.

Confirmation by an MD, DO, certified nurse-midwife, ob-gyn nurse practitioner or ob-gyn clinical nurse specialist which **must** include an expected date of delivery.

SSI/FAP Applicants

Defer applicants who apply for **both** SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time.

Substance Abuse Treatment Center Participant

Defer active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation. This does not include AA or NA group meetings.

Unemployment Compensation (UC) Applicant or Recipient

Defer an applicant for or recipient of unemployment compensation (UC). This includes a person whose UC application denial is being appealed.

In this case, the Department contends that both Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) cases should be sanctioned for his failure to participate in employment and/or self-sufficiency related activities. Claimant asserts he is disabled and feels he should not be required to participate in the Michigan Works Agency/Jobs Education and Training Program (JET). The evidence shows that the Department followed their policy by referring Claimant to Michigan Rehabilitative Services (MRS), obtaining a disability determination from the Medical Review Team, and referring him to Jobs Education and Training Program (JET) along with an identification of his medically determined limitations.

The Jobs Education and Training Program (JET) required Claimant to participate in classes and job search activities for 30 hours per week. Claimant does not dispute that he failed to participate for the required amount of hours. Claimant asserts he is unable to participate due to his medical limitations. Claimant's medically determined limitations area: occasionally lifting/carrying 10 pounds; frequently lifting/carrying under 10 pounds; stand and/or walk at least 2 hours in an 8 hour workday; and sit about 6 hours in an 8 hour workday. Claimant also testified that he cannot get around very well and that sometimes his medications affect him such that he

should not drive. Claimant was specifically asked if he requested transportation from the Jobs Education and Training Program (JET), Claimant stated he had not.

During the hearing Jobs Education and Training Program (JET) Director of Case Management Kechcalo was present and testified. She stated that participants may conduct their job search activity by going out to local businesses or by telephone and computers from the JET offices. She also testified that assistance with transportation is available.

The evidence in this record shows that Claimant's limitations were fully accommodated. Claimant's limitations did not prevent him from meeting his participation requirements. There is no good cause for Claimant's 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 sanctioned Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) cases for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/

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

Date Signed: August 31, 2009

Date Mailed: September 1, 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 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]