

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:



SOAHR Docket No. 2009-27372 REHD
DHS Reg. No: 2009-27064

Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACRS R 400.919 upon the request of the Claimant's representative. The undersigned Administrative Law Judge reviewed all documentary evidence, the hearing recording, the Decision and Order, and the Request for Reconsideration.

ISSUE

1. Did the Administrative Law Judge err in his finding that the Department properly closed Claimant's Family Independence Program (FIP) case?
2. Should the Department consider documentation not available to Claimant at time of hearing, to consider good cause for JET noncompliance?

FINDINGS OF FACTS

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

1. On May 26, 2009, Administrative Law Judge Steve Brown issued a Decision and Order in which the Administrative Law Judge affirmed the Department of Human Services' (DHS) closure of Claimant's FIP case due to her failure to comply with the WF/JET program requirements and attend her scheduled triage meeting.
2. On June 19, 2009, the State Office of Administrative Hearings and Rules, Administrative Hearings (SOAHR) for the Department of Human Services received the Claimant's Request for Rehearing/Reconsideration filed on behalf of Claimant by her attorney.

3. On July 29, 2009, SOAHR issued an Order of Reconsideration.
4. The ALJ's Findings of Fact 1-6 from the Hearing Decision mailed May 26, 2009, are incorporated by reference.
5. Prior to the May 19, 2009, hearing Claimant and her attorney attempted to obtain verification of attendance and a written reason why Claimant's schooling was terminated, but the cosmetology school failed to provide the information.
6. After the hearing, the Claimant's attorney received a May 28, 2008, letter from the cosmetology school indicating it had lost its federal funding accreditation with verification of attendance included. (See attachments to Claimant's request for reconsideration.)

CONCLUSIONS OF LAW

The Family Independence Program (FIP) program was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USC 601, *et seq.* The Department of Human Services (DHS or Department) administers the FIP program pursuant to MCL 400.10, *et seq.* Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

As articulated in the ALJ's March 2009 Hearing Decision DHS mailed notice to the Claimant of an impending closure of Claimant's FIP case due to her alleged failure to comply with the Work First/Jobs, Education and Training (WF/JET) program. The notice provided an opportunity for Claimant to establish good cause for not being able to comply with WF/JET. A triage meeting was scheduled for Claimant to establish good cause noncompliance, in this instance to verify attendance in cosmetology school and provide documentation of reason why her schooling was terminating.

The Department's FIP policy requires a client to participate in the WF/JET program:

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.

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As stated in the above DHS policy, good cause is a valid reason for noncompliance with self-sufficiency-related activities. In Claimant's case, the Department afforded Claimant an opportunity to provide verification of good cause for noncompliance with self-sufficiency-related schooling. The evidence shows that Claimant informed DHS the cosmetology school would not release her attendance record because of an alleged unpaid tuition dispute, that she did not provide verification of good cause for non-compliance, and that she failed to attend the scheduled triage meeting. The Department's policy addressing FIP WF/JET noncompliance for good cause, in pertinent part:

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.

If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to JET. Do not do a new JET referral.

Good cause includes the following:

Employed 40 Hours The person is working at least 40 hours per week on average and earning at least state minimum wage.

Client Unfit 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.

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The preponderance of evidence in the record demonstrates that Claimant did not produce documentation 1) to establish good cause for her noncompliance with WF/JET requirements as required by policy; and 2) failed to attend her scheduled triage meeting.

The Department is bound by policy to have verification of good cause for noncompliance and to close a FIP case if a Claimant does not establish good cause for noncompliance with WF/JET program requirements. Therefore, the evidence demonstrated DHS adhered to its policy and properly applied policy when closing Claimant's FIP case. An ALJ is also bound by the same policy.

The ALJ found that DHS determined no good cause existed and the Claimant's FIP case termination was in accordance with DHS policy.

The Claimant's attorney, during the hearing and in the Claimant's request for reconsideration asserted the Claimant's reason for noncompliance was due to conditions beyond the Claimant's control. The Claimant argues that the Claimant made every attempt possible to obtain attendance sheets from the months of December 2008 and January 2009, as well as a letter from the cosmetology school explaining that classes were not available to her for February 2009. There is no dispute among the parties that after the Claimant received the Department's letter of non-compliance and before her scheduled triage meeting date, the Claimant notified the Department that the cosmetology school was not providing her the requested paperwork even though she and her mother repeatedly attempted to obtain the paperwork. During the hearing and in the Claimant's request for reconsideration, the Claimant's attorney asserted that the Claimant attorney had to intercede on the Claimant's behalf in order to obtain the attendance sheets and letter, but even with her intercession the documents were not obtained before the hearing. The attached documents show that the cosmetology school did not date its letter until May 28, 2009, nine (9) days after the hearing.

DHS hearing policy allows the grant of reconsideration in a situation where newly discovered evidence is obtained that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision. The pertinent policy is as follows:

Rehearing/Reconsideration Requests

All Programs

The department, AHR or, if none, the client may file a written request for rehearing/reconsideration. Request a rehearing/reconsideration when one of the following exists:

- **Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.** (Bold emphasis added.)
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.
- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request.

Note: SOAHR will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in SOAHR.
- AHR or, if none, the client request -- received anywhere in DHS.

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In Claimant's case, both the Claimant and her attorney attempted to obtain documentation to establish good cause for JET noncompliance before the hearing but the cosmetology school did not provide the information until nine days after the hearing. A review of the attendance records and loss of education funding letter raises a substantial appearance that the information could have affected the DHS non compliance determination and the ALJ's Hearing Decision . Because the Claimant's attorney has now presented the documentation with the request for reconsideration which arguably could change the DHS non compliance finding the information must be reviewed and considered by DHS.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge's erred when he affirmed the Department of Human Services determination that the Claimant was in non compliance.

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IT IS THEREFORE ORDERED that:

1. The Administrative Law Judge's decision dated May 26, 2009, is REVERSED.
2. The Department of Human Services Department must review the May 28, 2009 cosmetology school's letter and attached attendance sheet and determine whether or not the Claimant was in non compliance. If DHS determines the Claimant was in compliance her benefits should be reinstated according to applicable DHS policy. If DHS determines that the Claimant was in non compliance a Triage meeting should be scheduled and held to determine if the Claimant had good cause for the noncompliance.

/s/ _____

Martin D. Snider
Administrative Law Judge
for Michigan Department of Human Services

cc: ██████████
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Date Signed: October 5, 2009
Date Mailed: October 5, 2009

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.