

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: 2009-27936

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 21, 2009

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 October 21, 2009. Claimant was present and testified. Claimant was represented by [REDACTED] her grandmother. Joanna Strom, CM, and Elsie Colbert, FIM, appeared on behalf of the department. The record was left open to November 4, 2009 for the submission of additional evidence, which was received.

ISSUE

Did the Department of Human Services (department) properly close claimant's Family Independence Program (FIP) benefits for noncompliance with work 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 FIP recipient in a household of three persons.

(2) On April 10, 2009, the department issued a Work First/JET appointment notice for claimant to attend JET on April 20, 2009. (Department Exhibit 1, pg. 1)

(3) Claimant called on April 20, 2009 and reported she could not make the JET appointment because she fell and broken her arm the day before. (Department Exhibit 1, pg. 2)

(4) On April 20, 2009, the department received a faxed copy of an Emergency Department note excusing claimant from work/class from April 20-22, 2009. (Department Exhibit 1, pg. 3)

(5) On April 23, 2009, the department received a faxed Unable to Work form, completed by claimant's treating physician's office, indicating claimant would be medically unable to work from April 22-29, 2009 and could return to work on April 30, 2009. (Department Exhibit 1, pg. 5)

(6) On April 23, 2009, the department issued a Verification Checklist for claimant to provide a DHS-49 Medical Examination Report by May 5, 2009. (Department Exhibit 1, pgs. 6-7)

(7) On May 4, 2009, claimant called the department and stated she had another doctor's note deferring her from work activities. The department asked claimant why she had not returned the DHS 49 requested on the Verification Checklist. Claimant indicated she did not receive it. (Department Exhibit 1, pg. 8)

(8) On May 6, 2009, the department issued another Verification Checklist for claimant to provide a DHS-49 Medical Examination Report by May 14, 2009. (Hearing Summary pg. 2, Department Exhibit 1, pg. 11)

(9) On May 8, 2009, the department received another faxed Unable to Work form completed by claimant's treating physician indicating claimant was unable to work from April 30, 2009 to May 20, 2009. (Department Exhibit 1, pg. 9)

(10) On May 14, 2009, a triage meeting was held by phone and claimant indicated she still had not received the DHS-49 Medical Examination Report from the department.

(Department Exhibit 1, pg. 10)

(11) On May 20, 2009, the department issued a Notice of Case Action that the FIP benefits would close effective July 1, 2009 for failure to participate in work-related activities without good cause. (Department Exhibit 1, pgs. 12-13)

(12) On June 4, 2009, claimant's treating physician completed a DHS-49 Medical Examination Report indicating a deteriorating condition, no physical limitations, some mental limitations, and that claimant would be able to return to work July 4, 2009. (Department Exhibit 1, pgs. 14-15)

(13) Claimant filed a hearing request on June 11, 2009, contesting the FIP determination.

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 Dependant 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 manuals.

The Family Independence Program (FIP) provides temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency-related activities so they can become self-supporting. Federal and State laws require each work eligible individual (WEI) in the FIP group to participate in the Jobs, Education and

Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain stable employment. PEM 230A.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) through the Michigan Works Agencies (MWAs). The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. PEM 230 A. A mandatory participant in the JET program who fails without good cause to participate in employment activity must be penalized. PEM Manual Item 233(a). The penalty for the first or second occurrence of noncompliance in the JET program is a closure for a minimum of three calendar months under the FIP program. PEM Manual Item 233(a). The penalty for the third and subsequent occurrences is a closure for a minimum of twelve calendar months under the FIP program. PEM Manual Item 233(a). If a customer is found in noncompliance with FIP when they are also a recipient of FAP, their FAP case will also be penalized for a minimum of three months under the JET program. PEM Manual Item 233(b); 42 USC 607. Good cause is a valid reason for noncompliance with employment related activities.

A claim of good cause must be verified and documented for applicants, members, and recipients. PEM Manual Item 230(a), PEM Manual Item 230(b); 7 CFR Parts 272 and 273. . Examples of good cause include if 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. PEM 233A.

In the present case, the evidence documents that claimant fell on April 19, 2009 suffering injuries that kept her from being able to work or participate in work related activities.

(Department Exhibit 1, pgs. 3, 5, 9) However, the extent of the injuries and how long claimant remained unable to participate in work-related activities was not clear when the department issued the Notice of Case Action on May 20, 2009. The department testified that they questioned the validity of the second Unable to Work form because the dates appeared altered and it was signed by a different treatment provider. The department also noted that the June 4, 2009 DHS 49-Medical Examination Report does not indicate any injuries from the fall or any physical limitations. (Department Exhibit 1, pgs. 9 and 14-15)

Claimant has provided credible testimony that the first Unable to Work form was completed by the physician's assistant at [REDACTED] because her doctor was not available to see claimant on that date. [REDACTED] faxed copies of two Unable to Work forms from their records to this ALJ after the hearing. (Claimant Exhibit B, pgs. 1-3) One was signed by the physician's assistant and indicated claimant was unable to work April 22-29, 2009 and was identical to the copy in the department exhibits. (Claimant Exhibit B, pg. 3 and Department Exhibit 1 pg. 5) The physician's office did not send a copy of an Unable to Work form similar to the second Unable to Work form faxed to the Department on May 8, 2009. (Department Exhibit 1, pg. 9) The other Unable to Work form faxed to this ALJ by [REDACTED] [REDACTED] was signed by the doctor on October 28, 2009 and indicates claimant was unable to work From April 19, 2009 to May 1, 2009. (Claimant Exhibit B pg. 2) However, this for was signed by the same treating physician as the form faxed on May 8, 2009. (Department Exhibit 1, pg. 9)

Claimant has also provided a more recent DHS-49 Medical Examination Report completed by her treating physician on October 23, 2009. (Claimant Exhibit A pgs. 2-4) According to this report, claimant suffers from depression post partum, (L) styloid fracture, and a severe ankle sprain. (Claimants Exhibit A, pg. 2) Her condition was listed as stable however; physical limitations were indicated due to the wrist and ankle injuries. (Claimant Exhibit A pg. 3) Mental limitations were also listed more clearly on this DHS 49 than on the June 4, 2009 DHS-49. (Claimant Exhibit A, pg. 4 and Department Exhibit 1, pg. 15)

Claimant's physician has not completed forms regarding claimant's impairments and limitations in a consistent manner. The June 4, 2009 DHS-49 Medical Examination Report only indicated mental diagnoses and limitations and indicated a return to work date of July 4, 2009. (Department Exhibit 1, pgs. 14-15) The October 28, 2009 Unable to Work form indicated claimant was able to return to work on May 2, 2009 with no limitations based on office visits April 22, 2009 and April 30, 2009. (Claimant Exhibit B, pg. 2) However, the DHS-49 completed April 23, 2009, based on office visits through June 4, 2009 does not include a return to work date, and indicates ongoing mental and physical limitations. The April 23, 2009 DHS-49 specifies that the physical limitations are due to claimant's wrist and ankle injuries. (Claimant Exhibit A, pgs. 2-4)

Treatment records have also been provided which document both the physical and mental impairments from January 26, 2009 through June 4, 2009. (Claimant Exhibit A, pgs. 5-11) These records document continued pain and swelling from the fall at an office visit April 30, 2009 and that a wrist splint was used until June 4, 2009 at which time additional follow up and an x-ray were still needed regarding the left wrist fracture. (Claimant Exhibit A, pg. 5-6)

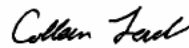
Based upon the foregoing facts and relevant law, it is found that claimant had good cause for not participating in JET due to her injuries from the April 19, 2009 fall. Despite the treating

physician's inconsistencies on the Unable to Work and DHS-49 forms, the treatment records support ongoing injuries and treatment through at least June 4, 2009. The department issued the Notice of Case Action that the FIP benefits would close due to noncompliance with work related activities without good cause on May 20, 2009. Accordingly, the department shall re-instate the FIP benefits retroactive to the July 1, 2009 closure.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had good cause for not participating in the JET program due to her injuries from the April 19, 2009 fall.

Accordingly, the department's determination is REVERSED. Therefore, it is ORDERED that the department re-instate claimant's FIP benefits retroactive to the July 1, 2009 closure, awarding benefits to claimant, if appropriate, in accordance with this decision.



Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 19, 2009

Date Mailed: November 20, 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 mailing date of the rehearing decision.

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