

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: 2009-28757
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 20, 2009
Grand Traverse 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 August 20, 2009. The claimant personally appeared and provided testimony, along with her mother, [REDACTED], and her daughter, [REDACTED].

ISSUE

Did the department properly determine the claimant was noncompliant with Family Independence Program (FIP) requirements of attending the Work First/Jobs, Education and Training (WF/JET) program in June, 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 deferred from WF/JET participation until the Medical Review Team (MRT) issued a JET participation assessment that indicated the claimant was not disabled and was work ready with some limitations. (Department Exhibit 1).

2. On February 9, 2009, the claimant was mailed a Notice of Employment and/or Self-Sufficiency Related Appointment/Assignment or Home Call (DHS-2442) scheduling the claimant to meet with a caseworker on February 12, 2009 and complete the Family Self-Sufficiency Plan. (Department Exhibit 2).

3. On March 17, 2009, the claimant was mailed a Verification Checklist (DHS-3503) and a WF/JET Training Appointment Notice (DHS-4785). These documents directed the claimant to begin attending WF/JET orientation on March 24, 2009. (Department Exhibit 3, 4).

4. The claimant signed the Work and/or Self-Sufficiency Rules for Cash Recipients (DHS-1538) on March 18, 2009. (Department Exhibit 6).

5. The claimant did not attend the March 24, 2009, orientation. On March 23, 2009, the claimant called the department and indicated she had to attend a funeral on March 24, 2009. The department indicated they would reschedule her orientation for March 31, 2009. (Department Exhibit 5).

6. The claimant was issued a new WF/JET Appointment Notice (DHS-4785) on March 25, 2009, scheduling her to attend orientation on March 31, 2009. The claimant was a no call/no show. (Department Exhibit 7).

7. The claimant was mailed a Notice of Noncompliance (DHS-2444) on April 2, 2009, scheduling a triage appointment for April 7, 2009. (Department Exhibit 8).

8. The claimant did attend the triage appointment. The claimant indicated that she had a migraine on that morning and couldn't attend WF/JET. The department granted the

claimant good cause and told her she would need to go to the rescheduled orientation appointment. (Department Exhibit 9 – 11).

9. The claimant was mailed another Verification Checklist (DHS-3503) and another WF/JET Appointment Notice (DHS-4785) on April 29, 2009, scheduling her to attend WF/JET orientation on May 5, 2009. The claimant was a no call/no show. (Department Exhibit 12, 13).

10. The claimant was mailed a Notice of Noncompliance (DHS-2444) on June 10, 2009, scheduling her for a triage appointment on June 16, 2009. (Department Exhibit 18, 19).

11. The claimant did attend the triage appointment. No good cause was granted for this noncompliance. The claimant was offered the opportunity to sign the First Noncompliance Letter (DHS-754) and return to WF/JET participation without any sanction. The claimant checked the box that indicates she disagreed with the final decision and requested a hearing. (Department Exhibit 20, 21).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

See BEM 233B for the Food Assistance Program (FAP) policy when the FIP penalty is closure. For the Refugee Assistance Program (RAP) penalty policy, see BEM 233C. BEM 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 related to assigned activities.
- .. Provide legitimate documentation of work participation.
- .. 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. BEM 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 in Bridges and the FSSP under the “Participation and Compliance” tab.

See “School Attendance” BEM 201 for good cause when minor parents do not attend school.

Employed 40 Hours

Client Unfit

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. BEM 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. BEM 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. BEM 233A, pp.4-5.

EFIP

EFIP unless noncompliance is job quit, firing or voluntarily reducing hours of employment.

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. BEM 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. BEM 233A, pp. 10-11.

DEFERRAL DECISIONS

Deferral Not Granted

When a request for deferral is not granted:

- . Document the basis of the decision including any limitations or restrictions in the FSSP under the “Barriers and Referral” tab, **and**
- . Advise and schedule an appointment with JET, **and**
- . Refer the client to JET, providing information on any limitations to full participation.

Advise the client of their right to:

- . Discuss the deferral decision with a supervisor (FIM), **and**
- . File a grievance with the MWA if they disagree with the activities assigned at JET, **and**
- . File a hearing regarding denial of support services such as transportation assistance, child care assistance, etc.

Note: When a deferral is not granted, it is not a loss of benefits, termination, or negative action. When a client requests a hearing based on not being granted a deferral, be sure to advise the client at the pre-hearing conference and use the DHS-3050, Hearing Summary, to inform the Administrative Law Judge the action did not result in a loss of benefits or services. Be sure the client understands that the right time to file a hearing is once they receive a notice of negative action for noncompliance. PEM 230A, pp. 18-19.

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, providing legitimate documentation of work participation, etc. BEM 233A. In this case, the claimant does not dispute that she was noncompliant with WF/JET program requirements. The claimant admits that she did not attend the WF/JET orientation.

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. BEM 233A. The claimant indicates that she was involved in a car accident in November, 2002. The claimant further testified that she gets migraines and has severe depression as a result of this accident. The claimant testified that there is no way she can participate with WF/JET with her limitations. The claimant submitted notes from her physician and her chiropractor to support her assertion that she can't attend WF/JET.

However, the claimant's medical records were reviewed by the MRT and the claimant was determined to be work ready with some limitations. This means that the claimant would be required to participate with WF/JET within her abilities. WF/JET can develop programs or activities that meet the claimant's limitations. Therefore, once MRT determined the claimant could participate with WF/JET, the claimant was required to attend.

As the claimant did not attend WF/JET, she is noncompliant. The department scheduled the claimant for orientation three separate times. The claimant did not ever attend the orientation as required. The claimant provided no evidence of any specific reason she could not attend WF/JET on the last scheduled orientation date. The claimant and her witnesses instead indicate that she is just not capable of attending WF/JET. However, as MRT found, the claimant can attend WF/JET with some limitations; thus, the claimant does not have good cause for her noncompliance.

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.

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: October 22, 2009

Date Mailed: October 26, 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: 