

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: 2009-4461
Issue No: 1038; 3028
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2009
Genesee 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 January 27, 2009. The claimant personally appeared and testified.

ISSUE

Did the department properly take action to terminate claimant's Family Independence Program (FIP) benefits, and did the department properly take action to reduce the amount of claimant's Food Assistance Program (FAP) benefits in October, 2008?

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 attending orientation for her Work First/Jobs, Education and Training (WF/JET) program when, on July 9, 2008, she told her JET supervisor that her doctor was going to temporarily defer her from participation requirements due to medical reasons. The

claimant was informed she would need to fill out a Medical Needs form (DHS-54A) for any deferral. (Exhibit 1A).

2. The department representative testified that she mailed two Medical Needs forms (DHS-54A) to the claimant on July 9, 2008 and August 22, 2008.

3. The claimant stopped attending her [REDACTED] WF/JET activities beginning August 22, 2008 and did not turn in a completed Medical Needs form. (Exhibit 1A).

4. A Notice of Noncompliance (DHS-2444) was mailed to the claimant on September 30, 2008, setting up a triage appointment for October 9, 2008. (Exhibit 2A).

5. The claimant was a no call/no show for her triage appointment on September 30, 2008. (Exhibit 3).

6. No good cause was established and the claimant's FIP was closed and her FAP benefits were reduced accordingly on October 21, 2008. (Exhibit 4, 5, 7).

7. A completed Medical Needs form was faxed from the claimant's doctor's office to the local DHS office on October 10, 2008. While the form was faxed on this date, it is signed by the physician on [REDACTED]. This form indicates that the claimant is capable of working at any occupation. (Exhibit 6).

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).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

DEPARTMENT PHILOSOPHY

FIP, RAP Cash

Department of Human Services (DHS) assists families in becoming self-supportive. By involving the adult members of the household in employment and/or self-sufficiency-related activities leading to self sufficiency, we help restore self-confidence and a sense of self-worth. PEM 230A, p. 1.

DEPARTMENT POLICY

FIP, RAP Cash

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds **not** in high school full-time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless 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 to find employment. Apply FIP policy to RAP cash clients unless a separate RAP cash policy is mentioned.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG), Michigan Works System. The individual sites where clients report are the Michigan Works! Agency's (MWA's). The JET program serves employers and job seekers to ensure that employers have skilled workers and workers have good jobs that provide economic self-sufficiency.

A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1.

TEMPORARY DEFERRALS

All deferrals are temporary. Clients meeting one of the criteria below are WEIs who are temporarily deferred from participation with or referral to an employment services provider. Temporarily deferred clients count in the state's federal work participation rate and are required to participate in activities that will increase their full potential, remove barriers and prepare them for employment or referral to an employment services provider. Except for children under the age of 16, deferred clients are WEIs and are included in the state's work participation rate and required hours are assigned.

All activities assigned to deferred clients on the FSSP that are non-paid activities require verification as outlined in "Verification Requirements" and "Verification Sources" later in this item Failure to return verification is noncompliance as outlined in PEM 233A.

FIS must ensure that each client assigned to self-sufficiency activities on the FSSP are given a sufficient number of DHS-630, Activity Logs, and return envelopes to last until the next planned meeting with the client. PEM 230A, p. 1.

Deferral for Age

Defer persons who are under age 16 or at least age 65.

Deferral for Disability

Defer the following:

- . Recipients of RSDI based on disability or blindness.
- . Persons found eligible for RSDI based on disability or blindness who are in non-pay status. PEM 230A, pp. 11-12.

Deferral for Short-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity which is expected to last less than three months and which prevents participation. Defer for up to three months.

Verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs form, or other written statement from an M.D. or D.O.

If a non-pregnancy-related condition lasts or is expected to last more than 3 months, follow deferral policy for long-term incapacity below.

Deferral for Long-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity expected to last more than three months and preventing their participation in employment-related activities.

When a client states they are disabled or indicates that he/she may be unable to participate in work or JET (including those who have applied for RSDI/SSI) because of a mental or physical condition, injury, illness, impairment, or problem at intake, review or anytime during an ongoing benefit period, require the client to provide verification from their doctor (a DHS-49 or DHS-54A may be used). PEM 230A, pp. 12-13.

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.

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.

DEPARTMENT PHILOSOPHY

DHS requires clients to participate in employment and/or self-sufficiency-related activities and to accept employment as

required. There are consequences for a client who refuses to participate in employment and/or self-sufficiency-related activities or refuses to accept employment without good cause.

DEPARTMENT POLICY

The policies in this item are for all Food Assistance Program (FAP) applicants and recipients. Noncompliance with employment requirements for FIP (see PEM 233A) affect FAP if both programs were active on the date of the noncompliance. PEM 233B, p. 1.

When to Disqualify

- . Disqualify a FAP group member for noncompliance when:
- . The client was active both FIP and FAP on the date of the FIP noncompliance, and
- . The client did not comply with FIP employment requirements, 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. PEM 233B, p. 1.

The claimant was participating with WF/JET when she informed her JET supervisor that her doctor was planning on deferring her from WF/JET participation due to medical reasons. At that time, the claimant was told to have her doctor complete and return a Medical Needs form. The department did not receive a Medical Needs form back from the claimant or her physician. However, claimant did not report back to WF/JET.

A triage appointment was scheduled for the claimant for noncompliance on October 9, 2008. The claimant testified that she did not receive notice of the appointment. However, the claimant also testified that she had not been having any problems with her mail and she did verify to this Administrative Law Judge that the mailing address was correct.

The day after the triage appointment was scheduled a Medical Needs form was faxed to the department from the claimant's physician's office. This form indicated that the claimant could work at any job, with no restrictions. While the form was faxed to the department on

[REDACTED], it was signed by the doctor on [REDACTED]. Thus, it is apparent that the claimant was not eligible for any medical deferral from WF/JET participation.

Refusal or failure to appear and participate with the JET program without good cause is a listed example of noncompliance. The claimant did not provide any Medical Needs form indicating that she had a medical reason for a deferral. In fact, when the form was received, it documented that claimant was able to participate fully. Thus, claimant was required to attend and participate with the JET program. As claimant did not, she was in noncompliance.

The claimant did not have any good cause for the noncompliance or for not attending the triage appointment. Thus, the department properly closed her FIP benefits case and properly reduced her FAP benefits for noncompliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did properly terminate the claimant's FIP benefits and accordingly reduce the claimant's FAP benefits in October, 2008.

Accordingly, the department's action is **AFFIRMED** and it is **SO ORDERED**.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 2, 2009

Date Mailed: February 3, 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.

2009-4461/SLK

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.

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