

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: 2009-4462
Issue No: 1038; 3028
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 27, 2009
Saginaw 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 terminate the claimant's Family Independence Program (FIP) benefits and sanction the claimant for noncompliance in July, 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 receiving FIP and FAP benefits in June 2008, when the department noticed that she had not provided verification of her Work First/Jobs, Education and Training (WF/JET) program medical deferral and that the claimant had never completed the Family Automated Screening Tool (FAST online survey). (Exhibit 6).

2. The claimant was mailed a Verification Checklist (DHS-3503) on June 18, 2008 which requested a completed Medical Examination Report (DHS-49) and requested the claimant complete the online FAST survey. The claimant had until June 28, 2008 to provide the requested verification and perform the online survey. (Exhibit 4).

3. Along with the Verification Checklist, the claimant was also sent a Notice of Employment and/or Self-Sufficiency Related Noncompliance form (DHS-2444). This form indicated that the claimant was in noncompliance because she hadn't completed the FAST online survey, but did NOT schedule a triage appointment, with that section of the form being left blank. (Exhibit 5A).

4. The claimant did not return the completed Medical Examination Report or complete the online FAST survey by the due date of June 28, 2008.

5. Department testimony corroborated that no triage was conducted.

6. Although no triage appointment was conducted, the department found no good cause for the claimant's noncompliance and closed her FIP benefits case on July 15, 2008. The department also sanctioned the claimant for three months for the noncompliance. (See hearing summary, Exhibits 7, 8).

7. The claimant requested a hearing on September 26, 2008 due to her case closure and the noncompliance sanction.

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 policy states:

REFERRALS TO EMPLOYMENT SERVICES PROVIDERS

Jobs, Education and Training Program

All Work Eligible Individuals (WEIs), unless deferred, disregarded or working 40 hours per week, must engage in employment at or above state minimum wage or participate in other MWA approved activities. These individuals are referred to as “mandatory participants.” Deferred FIP clients 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. PEM 230A, p. 4.

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.

VERIFICATION REQUIREMENTS

If the client refuses or fails to provide verification of a deferral when required, refer him/her to JET or elementary/middle/high school completion, as appropriate.

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 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 receiving FIP and FAP benefits and was deferred from JET participation for medical reasons, when the department noticed that no verification of the deferral had been received and the claimant had never completed the FAST online survey. The department did issue a Verification Checklist requiring the claimant to provide medical proof of her deferral from JET participation and requiring the claimant to complete the FAST online survey.

When the claimant did not return a completed medical deferral verification, she should have been referred back to JET for participation as indicated above in the “verification requirements” section of the policy. In this case, the claimant was not referred back to JET.

According to policy, it is an instance of noncompliance when the claimant fails or refuses to complete the FAST online survey. However, a triage appointment is required to determine if there was good cause for the noncompliance and to offer the claimant a chance to sign the First Noncompliance Letter (DHS-754) and give the claimant a second chance to comply with JET program requirements. In this case, testimony and documentation established there was no triage conducted. Thus, it was department error when the triage was not conducted and no good cause was found.

The department did not follow proper procedures when the claimant’s FIP benefits were terminated and her case sanctioned for three months.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the the department improperly terminated the claimant's FIP benefits and sanctioned her case for three months in July, 2008.

Accordingly, department's action is REVERSED. Department shall:

1. Re-open the claimant's case as of the date of closure, July 15, 2008.
2. Issue claimant any retroactive FIP/FAP benefits that she did not receive due to the closure.
3. Schedule a triage appointment for the claimant to allow her the opportunity to explain the reasons for her failure to complete the FAST survey and return the medical verification.
4. If the department does not find good cause, offer the claimant the First Noncompliance Letter, giving the claimant the opportunity to comply with WF/JET requirements, as she has no previous instances of noncompliance.

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.

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/om

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