

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2009-4506

Issue No: 1013

Case No:

[REDACTED]

Hearing Date:

December 17, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 Hearing received by the Department on November 14, 2008. After due notice, a telephone hearing was conducted from Detroit, Michigan on December 17, 2008. The Claimant appeared and testified. Ken Swiatkowski and Michelle Smoot appeared on behalf of the Department.

ISSUE

Whether the Department properly terminated the Claimant's FIP benefits based upon non-compliance with Jobs, Education, and Training ("JET") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Claimant is a FIP recipient.

[REDACTED] On July 30, 2008, the Claimant was [REDACTED]

[REDACTED]

3. On August 5th, the Department sent notification to the Claimant of an appointment [REDACTED] for August 13, 2008. (Exhibit 10)

4. The Claimant contacted [REDACTED] stated she was unable to attend the appointment. (Exhibit 9)

5. On August 27th, the Claimant's file was returned to the Department and then forwarded to the Medical Review Team ("MRT") for a disability determination. (Exhibit 8, 11 – 17)

6. On October 22, 2008, the Department received notification from the MRT of a JET deferral denial based upon a finding that the Claimant was capable of performing other work with limitations. (Exhibits 7, 8)

7. On October 28, 2008, the Claimant was notified to report to the JET program on November 3, 2008. (Exhibit 5)

8. The Claimant failed to report.

9. As a result, the Department sent a Notice of Non-compliance to the Claimant instructing her to appear for a November 14, 2008 triage. (Exhibit 3)

10. The Department pended the Claimant's FIP case for closure effective November 14, 2008.

11. During the triage, the Claimant provided medical documentation establishing that on November 3rd, the Claimant was hospitalized due to a grand mal seizure and thus was unable to participate in the JET program. (Exhibit 4)

12. The Claimant further stated that due to her disability she would be unable to participate in the JET program. (Exhibit 20)

13. On November 14, 2008, the Department received the Claimant's written hearing request protesting the termination of the FIP benefits. (Exhibit 18)

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).

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. PEM 233A, p. 1 The Family Self-Sufficiency Plan (“FSSP”) was created to allow DHS and other DHS client service providers to share information about mutual clients for optimal case management. PEM 228, p. 1 The FSSP seeks to assist clients to achieve self-sufficiency, whenever possible, by identifying and removing barriers. PEM 228, p. 1 All Work Eligible Individuals (“WEI”) are required to participate in the development of FSSP unless good cause exists. PEM 228, p. 1 As a condition of eligibility, all WEIs must engage in employment and/or self-sufficiency related activities. PEM 233A, p. 1 The WEI is considered non-compliant for failing or refusing to appear and participate with the Jobs, Education, and Training Program (“JET”) or other employment service provider. PEM 233A, p. 1 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. PEM 233A, p. 3 Failure to comply without good cause results in FIP closure. PEM 233A, p. 5 The first and second occurrences of non-compliance results in a 3 month FIP closure. PEM 233A, pp. 5-6

Individuals are deferred who have a mental or physical illness, limitation, or incapacity expected to last more than three months which prevents participation. PEM 230A, p. 12 Deferrals from JET participation are temporary. PEM 230A, p. 11 Short-term incapacity expected to last less than three months are deferred for up to three months. PEM 230A, p. 11 When verification for mental or physical illness, limitation, or incapacity indicates the disability will last more than three months, the employment code is set to IN; a Medical Review Date is entered for a three month follow up; the client is required to sign a release (DHS 1555E); and a request for a MRS consultation is made. PEM 230A, p. 13

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. PEM 233A, p. 7 In processing a FIP closure, the Department is required to send the client a notice of non-compliance, DHS-2444, which must include the date(s) of the non-compliance; the reason the client was determined to be non-compliant; and the penalty duration. PEM 233A, p. 8 In addition, a triage must be held within the negative action period. PEM 233A, p. 8 A good cause determination must be made prior to the negative action effective date. PEM 233A, p. 8

In February 2005, the Claimant had surgery due to a brain aneurysm. Since that time, the Claimant experiences frequent seizures. On October 22, 2008, the MRT denied the Claimant's JET/MRS exemption resulting in a JET referral. The Claimant was unable to participate because she was hospitalized due to a grand mal seizure. The Department agreed that the Claimant established good cause for failing to attend the November 3rd JET appointment. During the triage, the Claimant reiterated her inability to participate due to the frequency of her seizures however a deferral was not granted nor was the new medical information sent to the MRT. Instead, the Department continued with the FIP closure. In light of the foregoing, the Department's actions are not upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department's actions are not upheld.

Accordingly, it is Ordered:

1. The Department's determination is REVERSED.
2. The 3-month sanction for non-compliance is not imposed.
3. The Department shall supplement the Claimant for any lost FIP benefits (if any) she was otherwise entitled to receive due to the negative action in accordance with department policy.
4. The Department shall issue a Verification Checklist requesting the new medical records from November 3rd, and any subsequent records, to be submitted to the MRT for reconsideration in accordance with department policy.

/s/ _____
Colleen M. Mamelka
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/22/08

Date Mailed: 01/06/09

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 receipt 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.

CMM

