

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: 2009-5286
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 28, 2009
Kent 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 28, 2009. The claimant personally appeared and testified.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) cash benefits and Child Development and Care (CDC) benefits in November 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 CDC benefits when she was determined to be in noncompliance with JET program requirements for not attending intake orientation at

[REDACTED] (Department Exhibit #1).

2. The claimant was sent a Notice of Employment-Related Noncompliance on November 10, 2008. This notice scheduled a triage appointment on November 25, 2008, for the claimant to provide good cause for the noncompliance (Department Exhibit #5).

3. The claimant attended the triage appointment and good cause was not established for the noncompliance. The claimant signed First Noncompliance Letter (DHS-754) at the triage appointment on November 25, 2008 and was given one more chance to comply with JET program requirements (Department Exhibit #7).

4. On December 12, 2008, the [REDACTED] worksite supervisor ended the claimant's referral with [REDACTED] because "[REDACTED] did not contact me on 12/4 regarding faxing her DHS-754. She did not come in the following day for job leads." (Department Exhibit #8).

5. The claimant testified that she completed her 40 hours of job search readiness activities by December 4, 2008. Claimant indicated that she thought her worksite supervisor at [REDACTED] would automatically fax the verification of the hours when claimant completed the hours.

6. Department representatives testified that even if claimant completed the hours, it was the claimant's responsibility to ensure that the verification form got faxed by her worksite supervisor.

7. The claimant testified that she was not capable of turning in her job leads sheet on Friday, December 5, 2008 as she had been incarcerated on that day at the [REDACTED]. The claimant did provide an Interim Bond/Fast Track Release Form and jail identification card from the [REDACTED] that shows she was incarcerated at the jail on [REDACTED] and was not released until 6:01 pm. (Claimant Exhibit #10 and #11).

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 Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 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.

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. PEM 233A, pp. 3-4.

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.

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.

In this case, the claimant was terminated from WF/JET because the claimant had “not contacted” the worksite supervisor on December 4, 2008 about faxing her DHS-754 compliance verification to DHS and because claimant didn’t show up on December 5, 2008 to turn in her job leads. It is not alleged that claimant did not complete her 40 hours of job search/readiness activities by December 4, 2008. The department appears to indicate that the burden to make sure claimant’s compliance verification form was faxed to the DHS office is on claimant. However, claimant had provided the form to her worksite supervisor, who was the same person who supervised her during the entire 40 hours.

Clearly, if the claimant was going to several different agencies or companies and keeping a log of these activities, the information may have to be turned in by the claimant. However, in this case, the claimant’s supervisor at [REDACTED] was the sole individual signing and verifying the claimant’s 40 hours of work. As the department has the capability of viewing the Update/View Case Notes and the supervisor is a WF/JET contractor, it would appear reasonable for the claimant to assume that once the form was given to her supervisor, the supervisor would sign when the hours were completed and fax it to the department. It doesn’t seem reasonable that the worksite supervisor would have to wait until the client “contacted her” to fax the form to the department when, as a WF/JET contractor, she would be familiar with the verification process and know that the DHS-754 should be signed by her, as the supervisor, and returned to the department.

The department alleges that the other instance of the claimant's noncompliance occurred when she failed to show up to turn in her job leads on December 5, 2008. However, the claimant has provided evidence that she was incarcerated on [REDACTED] and did not get out of the county jail until 6:01 pm, which was after the time she would have been able to turn in her job leads. According to departmental policy, good cause for noncompliance includes unplanned events or factors, specifically listing jail as one of the factors. Thus, the claimant had good cause for not turning in her job leads on December 5, 2008. Claimant testified that she turned the job leads in on the following Monday, which was not disputed by the department. Therefore, it would seem that the claimant should not have been terminated from WF/JET participation based on either of these instances.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly took action to terminate the claimant's FIP and CDC benefits in November, 2008.

Accordingly, the department's action is REVERSED. Department shall reinstate the claimant's FIP and CDC benefits and issue any retroactive payments back to November, 2008, that the claimant is eligible for. SO ORDERED.

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

Date Signed: February 10, 2009

Date Mailed: February 12, 2009

2009-5286/SLK

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

cc:

