

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: 2009-5439

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 28, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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. Claimant personally appeared and testified. Department's representatives included [REDACTED] Work First Program Director, participating by a three-way telephone connection from her work site.

ISSUE

Did the department properly terminate claimant's Family Independence Program (FIP) 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. Claimant and her husband were FIP recipients and mandatory Work First/Jobs, Education and Training (WF/JET) participants. On September 15, 2008, the department mailed

the claimants two DHS-4785, Work First/Jobs, Education and Training Appointment Notice, on September 15, 2008, scheduling a JET Orientation appointment for September 22, 2008 (Department's Exhibits #1 and 2).

2. The Notices state "No early dismissals – you are required to attend each day". JET staff noted on these Notices that the claimants "did not stay".

3. On September 29, 2008, department mailed the claimants Notice of Noncompliance, DHS-2444, stating that on September 22, 2008, they attended Work First, signed in and did not stay. A triage appointment was scheduled for October 9, 2008, to discuss claimants' reasons for their alleged noncompliance with WF/JET (Department's Exhibit #3).

4. Claimants did not appear for their triage appointment and department determined they had no good cause for WF/JET noncompliance (Department's Exhibit #4).

5. Department terminated claimant's FIP benefits on October 11, 2008. Claimant requested a hearing on December 1, 2008.

6. At the hearing claimants disputed department's allegations that they left WF/JET site after signing in on September 22, 2008. Claimants testified that they were at the WF/JET site on this date, that they took a test, completed some other paperwork, had to sign out, and were released by a [REDACTED] for the day after being issued bus tickets.

7. WF/JET representative at the hearing did not have information available to respond to claimants' testimony, but was to obtain additional information from [REDACTED] about the claimants, and also to locate what type of paperwork claimants completed and when did they allegedly leave WF/JET site on September 22, 2008, according to the sign out sheets.

8. Additional information received from Mr. [REDACTED] addressed September 23, 2008, interactions with the claimants where they asked to leave early because they had a job interview.

██████████ concludes his memo by stating claimants did not provide verification of the job interview on September 24, 2008, when they returned to WF/JET site. ██████████ states that he “instructed participants to contact DHS because by forfeiting Tuesday, September 23, 2008, they had been sited for non-compliance in the program”.

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).

Departmental 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.

That the claimants were mandatory WF/JET participants is not in dispute. What is in dispute is whether the claimants were indeed non-compliant with WF/JET on September 22, 2008. Notice of Noncompliance dated September 29, 2008, scheduling a triage appointment clearly states that September 22, 2008, is the date that claimants attended WF, signed in and did not stay (see Finding of Fact #3). Claimants testified that they did attend WF on September 22, 2008, took a required test, completed some other paperwork, had to sign out at a particular time, and a [REDACTED] released them along with several other participants for the day after they were given bus tickets to return home.

This Administrative Law Judge gave the department additional time to provide further information from [REDACTED] and also WF/JET records for September 22, 2008, to show what the claimants allegedly did/did not do, such as any paperwork they completed and the sign out sheet for this date to show what time they left WF/JET site. However, the statement provided after the hearing by [REDACTED] indicates that September 23, 2008, was the date claimants “forfeited”, and by doing so they were cited for non-compliance in the program (see Finding of Fact #8).

Departmental policy gives staff specific instructions for processing of the FIP closure when a client fails to meet employment and/or self-sufficiency-related requirements. PEM

233A, p. 9. This policy states that department must send a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance, within three days after learning of the noncompliance. Department did mail such notice to the claimants. Policy further states that the department must include on the DHS-2444 the date(s) of the noncompliance, **and** the reason the client was determined to be noncompliant, **and** the penalty that will be imposed, **and** schedule a triage to be held within the negative action period. DHS-2444 sent to the claimants lists as the reason for claimants' noncompliance that they signed in and did not stay at WF/JET on September 22, 2008. As already stated, claimants disputed this information. Additional information provided by the department following the hearing from [REDACTED]. [REDACTED] WF/JET staff person, indicates that the claimants allegedly were in noncompliance on September 23, 2008, as they failed to provide documentation for an absence of this date. Therefore, according to [REDACTED] statement, noncompliance reason listed on DHS-2444 is incorrect and cannot be used to support the conclusion that the claimants were WF/JET noncompliant, and to schedule a triage appointment due to such noncompliance.

It is noted that the claimants did not attend the triage appointment. Claimant stated she did contact her caseworker prior to the case closure and was told not to bother coming in. Claimant's caseworker does not recall such a telephone call. Claimant's husband stated he was under the assumption their FIP benefits were being terminated and that their attendance at the triage meeting would not prevent such termination. This Administrative Law Judge concludes that the triage appointment was not based on correct noncompliance reason and should have not been scheduled, so claimants' failure to attend it whether with good reason or not shall not be a factor in this decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly terminated claimant's FIP benefits in October, 2008.

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

1. Reinstatement claimant's FIP benefits retroactively to October, 2008 closure.

2. Issue the claimants any FIP benefits they did not receive as a result of the FIP closure. It is noted that if claimants have acquired new assets or income that must be considered when determining FIP eligibility since October, 2008 closure, department shall take such assets/income into account prior to issuing benefits.

3. Refer the claimants back to WF/JET program. Claimants are advised they must participate in this program unless they have valid excuse supported by documentation not to participate.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 26, 2009

Date Mailed: February 27, 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.

IR [REDACTED]

cc:

[REDACTED]