

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: 2009-5879
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 3, 2009
Ingham 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 February 3, 2009. Claimant personally appeared and testified.

ISSUE

Did the department correctly take action to 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 was a FIP recipient and a mandatory Work First/Jobs, Education and Training (WF/JET) participant when the department determined that she had no good cause for her failure to meet required hours of job search for the week of September 29, 2008. A triage

appointment was scheduled for October 13, 2008, to give the claimant an opportunity to present any good cause reasons for her alleged WF/JET noncompliance (Department's Exhibit #5).

2. Update/View Case Notes from WF/JET staff member indicate that the claimant had 3 unexcused absences that lead to the triage request. The Notes do not show a 1st unexcused absence, cite as 2nd unexcused absence September 24, 2008, when the claimant was in the hospital with her son and provided verification for this absence, and cite as 3rd absence October 1, 2008, when the claimant called in sick after being seen by a doctor (Department's Exhibits #2 and 3).

3. On October 13, 2008, department concluded that the claimant did not have a good cause reason for WF/JET noncompliance (Department's Exhibit #7).

4. Claimant was offered a First Noncompliance Letter, DHS-754, that stated if she completes a compliance test of 40 hours starting on October 13, 2008, and ending on October 23, 2008, she can avoid losing her FIP benefits. Claimant signed this letter on October 13, 2008 (Department's Exhibit #8).

5. On October 21, 2008, claimant's WF/JET Employment Specialist sent an e-mail to the department stating that the claimant did not fulfill her requirement with community service for her compliance test, therefore she failed the test and has been terminated from WF/JET (Department's Exhibit #11).

6. Claimant's FIP case was due to close on October 25, 2008. Claimant requested a hearing on October 22, 2008, and department deleted FIP negative action pending the outcome of this hearing.

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.

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.

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.

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.

PEM 233A.

In claimant’s case, WF/JET caseworker, who according to the hearing testimony no longer works for WF and is unavailable for this hearing, concluded that the claimant had 3 unexcused absences from WF/JET assigned activities during September, 2008. Review of Update/View Case Notes prepared by this WF/JET caseworker however does not reveal an instance of 1st unexcused absence. Furthermore, the Notes show that the claimant did provide documentation that her son was in the hospital from September 22, 2008 to September 24, 2008. Therefore, September 24, 2008, listed as 2nd unexcused absence should not be such. 3rd

unexcused absence is listed as October 1, 2008, due to claimant calling in sick. Claimant testified that she was in the hospital on this date due to problem pregnancy. Claimant also testified that she had a doctor's appointment on September 29, 2008, due to the pregnancy. Hearing testimony from departmental staff is that a time card for the claimant shows that she did report to WF/JET on September 30, October 2 and October 3, 2008. WF/JET staff person testified that WF/JET does not refer a client for triage usually unless they have had 3 unexcused absences. Documentation provided for the hearing does not establish that the claimant had this many unexcused absences and places in question whether she should have been referred for triage at all.

Furthermore, claimant also states she told her WF/JET worker that she was having medical problems due to her pregnancy, that she was handed a form for her doctor to complete, and that she returned it. Department has the form in their possession and it is indicated that the claimant should be given breaks every 4 hours, have access to water, and have a stool available to sit on. Claimant was assigned to community service at the triage for her noncompliance test, and was to fill food baskets at Mid Michigan Food Bank. WF/JET staff testimony is that if claimant's limitations were known, she most likely would have been assigned to a different activity, as filling food baskets does involve frequent movements.

It is true that the claimant agreed to a compliance test at the triage. However, claimant testified that she disagreed with the initial determination that she was WF/JET noncompliant, and that she also cited her medical problems at the triage meeting. Claimant stated that the triage discussion turned to her homeless state and that her medical problems were therefore not addressed. Departmental policy quoted above does cite medical issues, hospitalization and homelessness as some of the issues that likely prevent or significantly interfere with employment and/or self-sufficiency-related activities.

After considering the hearing testimony and reviewing documentation provided for this hearing, this Administrative Law Judge is of the opinion that some errors were made by claimant's WF/JET previous caseworker (who is unavailable for this hearing due to no longer working for WF) in assessing excused versus unexcused absences. Such errors appeared to have resulted in assignment to triage, an action that was not warranted according to WF/JET procedures described in the hearing (i.e. 3 unexcused absences prior to referring a client for triage). In addition, it is questionable if the claimant's medical condition was taken into consideration by her WF/JET worker, and if medical information was conveyed to WF/JET staff in charge of community service assignments. These issues warrant a conclusion that claimant's FIP benefits should not have been placed into closure.

DECISION AND ORDER

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

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

1. Continue claimant's FIP benefits without interruption.
2. Refer claimant back to WF/JET unless she meets one of the criteria listed in departmental policy for a deferral from this program.

SO ORDERED.

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

Date Signed: March 2, 2009

Date Mailed: March 2, 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]