

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: 2009-8876
Issue No: [REDACTED]
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 2009
Wayne 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 February 11, 2009. The claimant personally appeared and testified.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) 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 department's hearing summary indicates that the claimant's wife, [REDACTED], refuses to participate in JET activities and did not attend the scheduled triage, so the claimant's FIP benefits were terminated (Department Hearing Summary).

2. The claimant's wife, [REDACTED], was sent a Work First/Jobs, Education and Training (WF/JET) Appointment Notice on July 1, 2008, informing her to report to WF/JET on July 7, 2008 (Department Exhibit #1).

3. However, a Medical Needs (DHS-54A) form had been completed for [REDACTED] by her physician on June 30, 2008, which indicated that she could not work at her usual occupation or at any job (Department Exhibit #4).

4. The department representatives testified that [REDACTED] was referred to Michigan Rehabilitative Services. However, when asked for the copy of the referral, the department could not provide one or even testify that a referral was ever made.

5. The claimant's wife began working for [REDACTED]. On September 2, 2008, the department requested the claimant have the New Hire Employment Report (DHS-4635A) completed by the claimant's wife's employer by September 12, 2008.

6. The claimant testified that the employer faxed in the New Hire Employment Report prior to September 12, 2008. The department did not dispute that they received this verification from the employer by the due date.

7. The verification indicated that the claimant's wife was employed by [REDACTED] and worked from 20 – 30 hours per week. The claimant testified that she was working 40 hours per week.

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).

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.

Employed 40 Hours

Client Unit

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.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

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, it appears the department is unclear what basis they used to terminate the claimant's FIP benefits. The department's hearing summary merely indicates that the claimant's wife, [REDACTED], refused to participate in JET, didn't show up for the triage, and failed to notify the department of her employment.

This Administrative Law Judge specifically requested the department representative provide this judge with the basis for the termination of benefits. The department representative repeatedly indicated it was WF/JET noncompliance. However, there are two serious flaws with the department's basis for termination of benefits.

The first issue was the referral of the claimant's wife, [REDACTED], to WF/JET to begin with. The Work First/Jobs, Education and Training Appointment Notice shows that [REDACTED] was told to report to JET on July 7, 2008. However, the department had on file a Medical Needs form that showed the claimant couldn't work at any occupation at that time. The form was signed by the physician on June 30, 2008. The department clearly had this information as the department representative found it in the file, read it to this judge and later faxed it to me at my request.

The department tried to explain this by indicating that [REDACTED] hadn't complied with WF/JET because they had referred her to Michigan Rehabilitative Services (MRS) and she never attended her appointment. However, when this Administrative Law Judge asked for a copy of the referral notice or any evidence to show that the claimant's wife had been directed to attend

MRS, the department representative testified that there was no documentation in the file to show that [REDACTED] had ever been referred to MRS.

The department next indicated that if [REDACTED] was able to work, she should have been able to attend WF/JET. However, the department representative testified that if the claimant's wife was working full-time, she would not have to participate in WF/JET activities. The claimant testified that his wife is working full-time, 40 hours per week. Further, even if the department determined and verified the claimant's wife was underemployed, requiring WF/JET participation, the department never sent the claimant's wife a notice to return to WF/JET.

The only other issue the department brought up is the verification of the claimant's wife's employment. However, testimony from the claimant and the department established that the claimant's wife's employer did fax the New Hire Employment Report to the department by the due date of September 12, 2008.

Thus, it appears that there was not any incident of noncompliance on the part of the claimant's wife. The department failed to establish, either through documentation or testimony, that the claimant's wife was ever referred to MRS or back to WF/JET after the initial Medical Needs form was filled out by her doctor.

DECISION AND ORDER

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

1. Re-open and reinstate claimant's FIP benefits retroactively to the November, 2008 date of closure.

2. Issue the claimant any supplemental FIP benefits back to the date of closure, that he is entitled to.

3. Issue the claimant's wife a verification of employment to verify her work status, including her number of hours of employment.

4. Determine if the claimant's wife is a mandatory WF/JET participant or if her work status excuses her from mandatory participation.

/s/

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

Date Signed: February 20, 2009

Date Mailed: February 20, 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.

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