

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: 2009-10953  
Issue No: [REDACTED]  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 24, 2009  
Gladwin 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 24, 2009. The claimant personally appeared and testified, along with his mother, Roxanne Crosby and girlfriend, Stephanie Lorzine. The hearing record was left open until March 6, 2009, for additional evidence from both parties to be submitted.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits in December 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 a mandatory Work First/Jobs, Education and Training (WF/JET) participant. The claimant reported to his WF/JET case manager that he was starting a

job with [REDACTED] and had his orientation on September 14, 2008. He indicated to his case manager that he was scheduled to have a second day of orientation on September 17, 2008, and that he would be working on September 24, 2008 (Department Exhibit #8).

2. The claimant did attend his first day of orientation on September 14, 2008 (Department Exhibit #1, 9, Claimant Exhibit 10)

3. On October 20, 2008, the department received a Verification of Employment (DHS-38) from [REDACTED], indicating that the claimant had quit his employment because he had not shown up for his first actual day of work (Department Exhibit #1).

4. The department mailed the claimant a Notice of Noncompliance (DHS-2444) on November 21, 2008, setting a triage appointment for December 2, 2008 (Department Exhibit 2#).

5. The claimant attended the triage appointment and reported that he did go to [REDACTED] on his first day of work and that the staff there didn't know what to do with him, so he went into the food court and then left. The [REDACTED] supervisor told the department representative that she had offered him a job that day doing carts and he came into the store, didn't speak to anyone and then left. No good cause was granted by the department (Department Exhibit #6).

6. The claimant's case closed on December 3, 2008, for the alleged noncompliance (Department Exhibit #3).

#### 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.

### **Refusing Suitable Employment**

- . Refusing suitable employment means doing **any** of the following:
  - .. Voluntarily reducing hours or otherwise reducing earnings.
  - .. Quitting a job (see exception below).

**Exception:** This does NOT apply if:

- (a) The MWA verifies the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.
  - (b) A teen parent or dependent child quits a seasonal job to return to a high school or GED program.
- .. Firing for misconduct or absenteeism (not for incompetence).

**Note:** Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

- .. Refusing a bona fide offer of employment or additional hours up to 40 hours per week. A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent.

**Exception:** Meeting participation requirements is NOT good cause for refusing suitable employment, unless the employment would interfere with approved education and training.

Do NOT penalize applicants or member adds that refused employment more than 30 days prior to the date of application or date of member add. PEM 233A, pp.2-3.

### **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.

### **No Child Care**

The client requested Child Day Care Services (CDC) from DHS, the MWA, or other employment services provider prior to case closure for noncompliance and CDC is needed for a CDC-eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client’s home or work site.

- . **Appropriate.** The care is appropriate to the child’s age, disabilities and other conditions.

- . **Reasonable distance.** The total commuting time to and from work and child care facilities does not exceed three hours per day.
- . **Suitable provider.** The provider meets applicable state and local standards. Also, providers (e.g., relatives) who are NOT registered/licensed by the DHS Office of Child and Adult Services must meet DHS enrollment requirements for day care aides or relative care providers. See PEM 704.
- . **Affordable.** The child care is provided at the rate of payment or reimbursement offered by DHS.

### **No Transportation**

The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

### **Illegal Activities**

The employment involves illegal activities.

### **Discrimination**

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc. PEM 233A, p. 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.

### **Comparable Work**

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

### **Long Commute**

Total commuting time exceeds:

- . Two hours per day, NOT including time to and from child care facilities, **or**
- . Three hours per day, including time to and from child care facilities. PEM 233A, pp.4-5.

### **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 disputes that he was noncompliant with his WF/JET responsibilities. The claimant testified that he went through orientation and worked a couple of days for [REDACTED], when the staff there told him they didn't have anything for him to do, so he left. However, his testimony is in direct contradiction to the testimony of all the other individuals involved and to the documentation.

The claimant's supervisor at [REDACTED] was [REDACTED] [REDACTED] completed an Employment Verification form and indicated that the claimant's employment both began and ended on September 14, 2008. Under the employer's comments section, she indicated "Ryan was scheduled for work and never showed up." The hearing record was left open for clarification from [REDACTED]. Her subsequent statement indicates that the claimant did have orientation on September 14, 2008, and that he did attend and was paid for the orientation. [REDACTED] [REDACTED] indicated that at the orientation she informed the participants that [REDACTED] did not have the money for the second day of orientation at that time, but would in a couple of weeks. On a subsequent day, an employee was going to be absent from work and [REDACTED] called the claimant to see if he would work. He agreed to come in and work. However, [REDACTED] indicates that the claimant came into [REDACTED], got something to eat and left. [REDACTED] pointed out that the claimant could have spoken to the front desk service manager or gone to personnel, but that he did not do so.

The claimant testified in the hearing to a different chain of events, stating that after his orientation, [REDACTED] called him and asked him to come in and work. Claimant further testified that when he got there, he talked to an Assistant Manager who told him that [REDACTED] wasn't there and that she didn't know what he was supposed to do. Claimant then called his mom for a ride and left since they had no work for him.

As discussed in the hearing, the claimant's paycheck stub would have provided some evidence to indicate what days the claimant had actually worked. This Administrative Law Judge therefore agreed to leave the record open for the claimant to submit his paycheck stub. However, despite the fact that claimant did submit an additional written statement during the period the record was left open, he did not submit his paycheck stub, which could have corroborated his claims.

What the claimant did submit, was a different chain of events in his post-hearing statement. This statement contradicted claimant's hearing testimony and the evidence from the department. Claimant indicates that he had orientation on September 14, 2008, worked on September 17, 2008, went in for more orientation on September 22, 2008, and then went back to [REDACTED] on September 24, 2008, which is when his supervisor wasn't there, and he left. As the claimant did not provide the paycheck stub, definitive evidence of what hours and days he may have worked, his claims are questionable.

The claimant also testified that he tried to inform his caseworkers that he was having problems with his job at [REDACTED] and wasn't working. When asked if the claimant had provided information concerning his problems with Kmart to his MW/JET caseworker, he testified that he had told her of the problems. However, this is directly contradicted by both the documentation kept and submitted by MW/JET and by the additional statement submitted by the WF/JET case worker when the record was left open. As indicated in the WF/JET case notes, the claimant was excused from WF/JET group meetings on September 17 and September 24, 2008 for his employment at Kmart. His WF/JET caseworker indicates in her subsequent statement that the claimant never notified her that he wasn't working.

When this Administrative Law Judge asked the claimant why he would be excused for meetings with WF/JET if he wasn't working, he indicated that he had showed up for the

meetings and his name wasn't on the attendance sheet, so he left. However, the department representative testified that his name would still be on the form, as the documentation concerning excused absences from meetings is kept on the case notes, not on the attendance sheet.

Thus, this Administrative Law Judge finds claimant's version of events less than credible. This Administrative Law Judge does find that the claimant did not comply with both WF/JET meetings and his employment with [REDACTED]. Even if [REDACTED] was not present when claimant came in to work, any other manager or assistant manager would have been able to get him started working. There would be no reason for a Kmart manager to send the claimant to the food court to get food and tell him to go home. Thus, the claimant was noncompliant with his WF/JET requirements by not reporting for his employment with [REDACTED] and also by not attending his WF/JET meetings when he was not working at [REDACTED]. As this is his third instance of noncompliance, the department properly closed his FIP case and applied a one-year sanction.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did properly close the claimant's FIP benefit case on December 3, 2008 due to noncompliance with WF/JET employment activities.

Accordingly, the department's action is UPHELD. SO ORDERED.

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

Date Signed: March 10, 2009

Date Mailed: March 11, 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.

[REDACTED]

cc:

[REDACTED]