

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: 2009-11781

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

Ingham 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 March 25, 2009. The claimant personally appeared and testified. Also providing testimony was [REDACTED], Program Coordinator and Domestic Violence Advocate.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits and reduce the claimant's Food Assistance Program (FAP) benefits accordingly in December, 2008 for Work First/Jobs, Education and Training (WF/JET) nonparticipation?

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 FIP and FAP recipient and was determined to be a mandatory WF/JET participant.

2. The claimant provided WF/JET with documentation from her physician for a medical leave from November 6 to November 12, 2008 (Department Exhibit #2).

3. The claimant called the WF/JET worker on November 13, 2008, to indicate that the doctor had extended her medical leave. WF/JET worker told her to bring in additional documentation for her medical leave (Department Exhibit #2).

4. The claimant brought in another doctor's slip on November 19, 2008, covering the period of November 17 to November 21, 2008 (Department Exhibit #2).

5. The department scheduled a triage appointment for the claimant due to alleged noncompliance on December 1, 2008 (Department Exhibit #4).

6. The claimant did not attend the triage appointment and the department found no good cause (Department Exhibit #9).

7. The claimant was the victim of a domestic violence assault by her husband on November 2, 2008 (Department Exhibit #13).

8. The claimant's FIP case closed on December 2, 2008, and her FAP benefits were reduced accordingly (Hearing Summary).

9. The claimant submitted a hearing request on December 22, 2008.

#### 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 Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. 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.

### **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.

The department alleges that the claimant was noncompliant with WF/JET program requirements because she didn't provide a doctor's excuse for the dates of November 14 – November 16, 2008. The claimant did provide doctor's slips indicating she couldn't work from November 6 – November 13, 2008 and from November 17 – November 21, 2008. The claimant was assaulted by her husband on November 2, 2008, and suffered some hand/wrist injuries.

Department policy lists certain factors which are held to be noncompliance. One of the listed factors is missing WF/JET appointments or meetings. PEM 233A. The department indicates that the claimant did not attend WF/JET from November 14 – November 16, 2008, and didn't provide a doctor's excuse. However, if the claimant was excused by a physician from November 6 – November 13 and from November 17 – November 21 of 2008, it is logical that the claimant would have been excused on the three days in between as well. It is highly unlikely that the claimant would not be able to work for seven days, able to work for three and then unable to work for five days again. It is also noted that the claimant's caseworker testified that she was aware that the claimant had a domestic violence history with her husband, which is a good cause factor for noncompliance. PEM 233A. While the claimant did not inform the caseworker of the specific incident on November 2, 2008, prior to the negative action date, testimony established that she had reported a previous Personal Protection Order and violations of this order to the department. The department was also aware that the claimant was going through a contentious custody battle and divorce with her husband. Department policy indicates that a deferral from WF/JET participation can be granted for domestic violence victims. PEM 230A. From the testimony it appears that no such deferral was considered for the claimant.

Thus, this Administrative Law Judge does not find that the claimant was noncompliant with WF/JET program requirements as the claimant's excused absence clearly would have covered November 14 – 16, as the claimant was excused by a physician for the seven days prior

to these dates and the five days after. Thus, the claimant should not have been terminated from FIP program benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined that the claimant was noncompliant with WF/JET program requirements and terminated her FIP benefits and reduced her FAP benefits in December, 2008.

Thus, the department shall:

1. Re-open the claimant's FIP case as of the date of closure, December 2, 2008 and issue the claimant any retroactive benefits that she is entitled to.
2. Recompute the claimant's FAP benefits without the FIP penalty and issue the claimant any retroactive benefits that she is entitled to.
3. Consider the claimant for a deferral from WF/JET participation and inform the claimant of the decision.

/s/

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

Date Signed: April 13, 2009

Date Mailed: April 14, 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.

SLK [REDACTED]

cc:

[REDACTED]