

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: 2009-14966
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 31, 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 March 31, 2009. The claimant appeared and testified, along with her fiancée,

[REDACTED]

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits for Work First/Jobs, Education and Training (WF/JET) noncompliance in February, 2009?

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 applied for FIP benefits and was determined to be a mandatory WF/JET participant.

2. The claimant was to attend orientation for WF/JET by December 25, 2008 (Department Exhibit #12).

3. The claimant did not attend orientation for WF/JET and did not turn in any medical documentation for a deferral (Department Exhibit #10).

4. A triage appointment was scheduled for the claimant on January 20, 2009 (Department Exhibit #10).

5. The claimant and her fiancée attended the triage appointment. The claimant indicated that her son had medical issues that required her care. The department issued the claimant a Verification of Application or Appeal for SSI/RSDI (DHS-1552) and a Medical Needs form (DHS-54A) to have completed by January 30, 2009 (Department Exhibits #7 and 8)

6. The department found no good cause for the claimant's noncompliance with attending WF/JET orientation (Department Exhibit #5).

7. The claimant signed a First Noncompliance Letter (DHS-754) and agreed to participate in WF/JET beginning on January 26, 2009 (Department Exhibit #6).

8. The claimant attended orientation on January 26, 2009, and attended WF/JET on January 27, 2009. The claimant spoke with WF/JET staff on January 27, 2009, and stated she would not be able to come to WF/JET on January 28, 2009 (Department Exhibit #2).

9. The claimant called WF/JET on January 29, 2009, and indicated she would not be able to come back to WF/JET until February 2, 2009. The claimant reported that she needed to get paperwork turned in to the DHS worker by January 30, 2009, and that she hadn't gotten the paperwork completed on the day she had already had off. The WF/JET worker told her the case would be referred back to DHS for noncompliance (Department Exhibit #2).

10. The claimant's FIP benefits were terminated on February 10, 2009, and the claimant submitted a hearing request on February 19, 2009.

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 claimant does not dispute that she was noncompliant with WF/JET program requirements. The claimant did sign the First Noncompliance Letter (DHS-754) agreeing to return and participate with WF/JET beginning the week of January 26, 2009. The claimant attended WF/JET on January 26 and 27, 2009. On January 27, 2009, she requested to have January 28 off to have time to complete paperwork for DHS (which she indicated to WF/JET was due on January 30, 2009). The claimant then called WF/JET on January 29, 2009, and indicated she needed January 29 and 30 off as well, and couldn’t return until February 2, 2009.

The claimant and her fiancée testified that their son has a medical condition that interferes with their ability to attend WF/JET. The claimant was given a Medical Needs form (DHS-54A) and a Verification of Application or Appeal for SSI/RSDI (DHS-1552) at the triage appointment on January 20, 2009. The claimant was instructed to have them completed and returned to the department by January 30, 2009.

The claimant testified that these were the forms she needed time off from WF/JET to complete. However, there would be no legitimate need for the claimant to take three days off from her WF/JET participation to complete these forms. First, the claimant had three full days to have the forms completed after her triage appointment (January 20, 2009) and prior to starting back to WF/JET (January 26, 2009). The claimant provided no explanation as to why she couldn't have taken care of the forms on these three days. Second, the two forms do not require completion by the claimant. The Medical Needs form only needed to be dropped off at her son's doctor, as the doctor is the person required to complete the form. The Verification of Application or Appeal for SSI/RSDI needed to be completed by the Social Security Administration when the claimant dropped off her son's application for SSI/RSDI. Thus, there is no legitimate reason why the claimant needed three days off from WF/JET to drop two forms off.

Thus, while the claimant indicates that she had good cause for her noncompliance, this Administrative Law Judge does not find this to be the case. Department policy indicates that good cause for noncompliance includes situations where the client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client. PEM 233A. While the claimant alleged that her son required so much care that she couldn't participate in WF/JET, it is noted that he attended school five days a week. However, if there was a legitimate need for the claimant to be deferred from or accommodated in her WF/JET participation, she needed to turn in the Medical Needs form. As indicated previously, she clearly had ample time to drop the form off at her son's doctor's office for his physician to complete the form. It is noted that even at the time of the hearing, the claimant still had not had a physician complete the Medical Needs form.

Thus, this Administrative Law Judge finds that the claimant did not have good cause for her WF/JET nonparticipation. The claimant had already been triaged and agreed to participate in WF/JET, when she was again noncompliant by not attending WF/JET for three days. This Administrative Law Judge finds no good cause for her absences.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly terminated the claimant's FIP benefits for WF/JET nonparticipation in February, 2009.

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

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

Date Signed: April 20, 2009

Date Mailed: April 21, 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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