

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: 2009-15586

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 15, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on April 15, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly sanction claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities?

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 an ongoing recipient of Family Independence Program (FIP) benefits. Claimant was assigned to participate in the Work First/Jobs, Education and Training Program (JET).

(2) On December 18, 2008, claimant attended a triage meeting about her poor attendance and failure to meet Jobs Education, and Training Program (JET) guidelines. The department determined there was no good cause for claimant's poor attendance. Claimant signed a First Non-Compliance Letter (DHS-754) agreeing to a 10 day compliance test in stead of a case sanction. The compliance test started December 22, 2008.

(3) On December 30, 2008, claimant called Work First and stated she would not come in because it was too expensive to park and she refuses to ride a bus.

(4) On January 6, 2009, the DHS caseworker reported to Work First, that claimant and the DHS caseworker had spoken and claimant was being given a second opportunity 10 day compliance test that would begin January 6, 2009. The Work First case manager thought claimant had been triaged for only reporting in on one day.

(5) On January 7, 2009, claimant was absent from the Work First/Jobs, Education and Training Program (JET). Claimant reported she was attending school through the [REDACTED] [REDACTED] Claimant did not have any educational program approved for participation activity through Work First.

(6) On January 8 & 9, 2009, claimant was absent from the Work First/Jobs, Education and Training Program (JET). Claimant provided documentation of a medical situation.

(7) On January 12, 2009, claimant was absent from the Work First/Jobs, Education and Training Program (JET). Documentation was provided.

(8) On January 13, 2009, claimant was absent from the Work First/Jobs, Education and Training Program (JET). Claimant reported her furnace went out but provided no documentation.

(9) On January 14, 2009, claimant was absent from the Work First/Jobs, Education and Training Program (JET). Claimant reported she was attending school through the [REDACTED]. Claimant did not have any educational program approved for participation activity through Work First.

(10) On January 15 & 16 2009, claimant was absent from the Work First/Jobs, Education and Training Program (JET). Claimant reported she had to take her grandchild to the emergency room and he still sick the next day.

(11) On January 21, 2009, claimant was absent from the Work First/Jobs, Education and Training Program (JET). Claimant reported she was attending school through the [REDACTED]. Claimant did not have any educational program approved for participation activity through Work First.

(12) On January 23, 2009, Work First again referred claimant to DHS for a triage. Claimant was sent a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting for February 10, 2009.

(13) On February 10, 2009, claimant attended the scheduled triage meeting. The Department determined there was no good cause for claimant's poor attendance. Claimant was sent a notice of case action stating her Family Independence Program (FIP) case would be closed on February 24, 2009.

(14) On February 17, 2009, claimant submitted a request for 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 (formerly known as the Family Independence Agency) 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).

None of the above facts are disputed. During the hearing claimant expended most of her energy railing about how worthless the Work First program was and what a waste of time it was for her. Claimant also specifically stated that the Work First/Jobs, Education and Training Program (JET) only allows for missing three days. It is noted that claimant was absent 8 days (all business days) during her second opportunity 10 day compliance test which started on January 6, 2009. Department policy provides the following guidance for caseworkers. The department's policies are available on the internet through the Department's website.

**FAILURE TO MEET EMPLOYMENT AND/OR
SELSUFFICIENCY-RELATED REQUIREMENTS:**

FIP

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

All Work Eligible Individual (WEI) and adult non-WEIs (except ineligible grantees, clients deferred for lack of child care (DC) and disqualified aliens), see PEM 228, who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

Depending on the case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).
- Case closure for a minimum of three or 12 months.

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.

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:

Exception: Do not apply the three or 12 month penalty to ineligible caretakers, clients deferred for lack of child care (DC) and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

- 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.

Note: FIS should clear the FAST Fall Out Report and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST non-completion.

- Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).

Note: FIS must have scheduled a FSSP completion appointment with the client and the client failed to attend before considering a client noncompliant for FSSP non-completion.

- Comply with activities assigned to on the Family Self Sufficiency Plan (FSSP) or PRPFC.
- Provide legitimate documentation of work participation.
- 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.

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:

- The MWA verifies the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.
- 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.

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.

NONCOMPLIANCE PENALTIES AT APPLICATION

Noncompliance by a WEI while the application is pending results in group ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending must have benefits delayed.

A good cause determination is not required for applicants who are noncompliant prior to FIP case opening.

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.

Begin the sanction period with the first pay period of a month. Penalties are automatically calculated by the entry of noncompliance without good cause on the FSSP. This applies to active FIP cases, including those with a member add who is a WEI JET participant.

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 requirements 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.

HEARINGS

Expedited Hearings

Staff must identify cases for SOAHR (administrative hearings) when a client files a hearing based on closure due to noncompliance with an employment and/or self-sufficiency related activity. SOAHR has agreed to expedite these hearing requests in an effort to engage clients in a timely manner and improve the state’s overall work participation rate.

Write “**Expedited Hearing E&T**” at the top of the hearing request so that it can be easily identified as a priority. Refer to PAM 600, “[Expedited Hearings](#)” for additional instructions.

Hearing Decisions

When a hearing decision is upheld for noncompliance, impose the penalty for the first full month possible for either 3 or 12 months. Do not recoup benefits.

The evidence of claimant’s behavior and actions in the record constitute one of the most blatant disregards of legal requirements for public assistance this Administrative Law Judge has had the misfortune to encounter. In accordance with Department of Human Services policy cited above, the evidence shows multiple specific acts of noncompliance within a two month period. Claimant was non-compliant for poor attendance prior to the December 18, 2008, triage meeting. Claimant was non-compliant during the 10 day compliance test beginning December 22, 2008, by only coming in one day. Claimant was non-compliant on December 30, 2008, when she orally stated a definite intent not to comply with program requirements by saying she was not coming in because it was too expensive to park and she refused to ride a bus. Claimant was non-

compliant during the second opportunity 10 day compliance test beginning January 6, 2009, by missing 5 days with no valid documentation of good cause.

On top of all that claimant had the temerity to present a doctor slip which states she was unable to work from September until April 7, 2009. This evidence completely contradicts undisputed evidence in the record that since September, claimant has: worked as a substitute teacher; participated in required Work First/Jobs, Education and Training Program (JET) activities; attended classes through the [REDACTED] and cared for her grandchildren. In light of claimant's undisputed activities, a note stating she is unable to work has absolutely no credibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly sanctioned Claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _____

Date Mailed: _____

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 receipt 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.

GFH [REDACTED]

cc: [REDACTED]