

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: 2009-15604
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2009
Jackson 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 May 13, 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 temporarily deferred from participation in the Work First/Jobs, Education and Training Program (JET) by the Department of Human Services and referred to Michigan Rehabilitative Services (MRS).

(2) On October 27, 2008, claimant was sent notice of a mandatory appointment at MRS on November 20, 2008. The notice was sent to claimant at [REDACTED].

(3) On November 20, 2008, claimant did not appear for the appointment or call to reschedule.

(4) On November 25, 2008, claimant was sent a second notice of a mandatory appointment at MRS on December 4, 2008. The notice was sent to claimant at [REDACTED].

(5) On December 4, 2008, claimant did not appear for the appointment or call to reschedule. MRS sent the DHS-517 form back to DHS showing that claimant did not participate.

(6) On December 5, 2008, claimant submitted a State Emergency Relief (SER) application with DHS. Claimant put [REDACTED] on the application as his address.

(7) On December 15, 2008, claimant was sent a Notice of Non-Compliance (DHS-2444) for his failure to attend either meeting at MRS. The notice also scheduled a mandatory meeting on December 23, 2008. Claimant was also sent a notice of case action stating his Family Independence Program (FIP) case would close effective December 27, 2008. Both notices were sent to claimant at [REDACTED].

(8) On December 23, 2008, claimant did not appear for the meeting or call to reschedule.

(9) Claimant submitted three separate requests for hearing about his Family Independence Program (FIP) case, January 30, 2009, February 13, 2009, and 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 (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).

Department policy provides the following guidance for case workers. The department's policies are available on the internet through the department's website.

PEM 230A EMPLOYMENT AND/OR SELF-SUFFICIENCY-RELATED ACTIVITIES: FIP/RAP CASH

DEPARTMENT PHILOSOPHY

FIP, RAP Cash

The Family Independence Program (FIP) and Refugee Assistance Program (RAP) provides temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP and RAP engage in employment and self-sufficiency-related activities so they can become self-supporting.

DEPARTMENT POLICY

FIP, RAP Cash

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain stable employment. Apply FIP policy to RAP cash clients unless a separate RAP cash policy is mentioned in PEM 233C.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) through the Michigan Works Agencies (MWAs). The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. JET case managers use the One- Stop Management Information System also known as OSMIS to record the clients assigned activities and participation. In this item OSMIS is referred to as MIS.

WEIs not referred to JET will participate in other activities to overcome barriers so they may eventually be referred to JET or other employment service. DHS must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP). A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency-related activities is subject to penalties. For more about penalties refer to:

- [PEM 233A](#) - FIP-related penalties.
- [PEM 233C](#) - RAP Cash penalties.
See [PEM 230B](#) and [PEM 233B](#) for FAP employment requirements.

MANDATORY PARTICIPATION IN EMPLOYMENT SERVICES

All WEIs, unless temporarily deferred, must engage I employment that pays at least state minimum wage or participate in other employment-related services. WEIs who are temporarily deferred are required to participate in activities that will assist in overcoming barriers and prepare them for employment or referral to an employment services provider.

MANDATORY PARTICIPANTS

DELAYED REFERRAL TO EMPLOYMENT SERVICES

WEIs meeting one of the following criteria are only temporarily not referred to an employment service provider because they may continue to count in the state's federal work participation rate. They are required to participate in activities that will increase their full potential, help them overcome barriers and prepare them for employment or referral to an employment services provider as soon as possible.

Long-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity expected to last more than 90 days and preventing their participation in employment-related activities. Clients in this category may be referred to Michigan Rehabilitation Services (MRS) or the Commission for the Blind for consultation and may be eligible for ongoing services from those agencies. This includes:

- An individual with low intellectual capacity or learning disabilities that impede comprehension and prevent success in acquiring basic reading, writing, and math skills, including, but not limited to, an individual with an intelligence quotient less than 80.
- An individual with documented chronic mental health problems that cannot be controlled through treatment or medication.
- An individual with physical limitations on his or her ability to perform routine manual labor tasks, including, but not limited to, bending or lifting, combined with intellectual capacity or learning disabilities.

Consultation Response Within 45 days of the request MRS or the Commission for the Blind will:

- Schedule an appointment with the client.
- Complete a consultation.
- Complete Section II of the DHS-517 and send back to the FIS with their recommendation.

DHS Action on Returned DHS- 517 When the DHS-517 is returned, take action depending on the response as indicated below:

1. Client did not appear for appointment.
 - Follow Noncompliance with Employment and/or Self-Sufficiency- Related Activities in PEM 233A.

PEM 233A FAILURE TO MEET EMPLOYMENT AND/OR SELFSUFFICIENCY-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.

In this case, it is undisputed that claimant WAS NOT present at either MRS appointment or the scheduled meeting. Claimant asserts he never received the first MRS notice mailed on October 27, 2008. Claimant asserts he did get the second MRS notice mailed November 25, but not until after the date of the appointment. Claimant explained that he moved on about November 30 and that is why he did not get the second notice until later. Claimant testified that he thinks he notified DHS caseworker Huff of his new address. Ms. Huff was not his DHS case worker until AFTER his Family Independence Program (FIP) case closed. Claimant asserts he put the [REDACTED] address on the December 5, 2008, SER application because the utility bill

he wanted paid was from the place on [REDACTED] Claimant asserts he never got the Notice of Non-Compliance (DHS-2444) mailed on December 15, 2008 (S. Snyder was still the DHS caseworker on this date). Claimant asserts he moved to yet another place on January 17, 2009.

The first MRS notice was mailed on October 27, 2008. That is more than one month prior to claimant's asserted move on November 30, 2008. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). There is no evidence in the record sufficient to rebut the presumption that Claimant received the first MRS notice mailed on October 27, 2008. No further analysis is required to decide this case.

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 sanction 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.

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

Date Signed: May 15, 2009

Date Mailed: May 18, 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 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]