

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: 2009-15859
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 21, 2009
Bay 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 April 21, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine that the claimant was noncompliant with Work First/Jobs, Education and Training (WF/JET) program participation requirements and terminate the claimant's Family Independence Program (FIP) benefits in March 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 was determined to be a mandatory WF/JET participant, with a 20 hour per week requirement.

2. The claimant was telephoned by WF/JET Case Manager, [REDACTED] on February 13, 2009 and informed that she lacking hours for program participation compliance. The claimant reported that she and her son had been sick. The claimant agreed to make up hours and participate 31 hours the week of February 15, 2009 to bring herself into compliance (Department Exhibit #12).

3. The WF/JET Case Manager requested a triage for the claimant on February 19, 2009, indicating that the claimant did not meet her Federal participation requirement of 20 hours. The claimant was given credit for 12 hours one week, 10 hours the next week and 3 hours the next week (Department Exhibit #7).

4. On February 19, 2009, the claimant was mailed a Notice of Noncompliance (DHS-2444) that scheduled a triage appointment for February 26, 2009 (Department Exhibit #8).

5. The claimant did attend the triage. During the triage appointment, the claimant submitted a doctor appointment note from her son for the date of February 4, 2009 (Claimant Exhibit #3). The claimant also submitted a [REDACTED] financial aid meeting form, indicating an appointment date of February 12, 2009 (Claimant Exhibit #2). The claimant also submitted a Demand for Possession Nonpayment of Rent, indicating that she was going to be evicted (Claimant Exhibit #4, 14) Lastly, she also submitted a copy of discharge instructions for her father, showing he had been treated at the hospital for scabies on February 8, 2009 (Claimant Exhibit #5 – 6).

6. The department did not grant the claimant good cause for her noncompliance with WF/JET program requirements (Department Exhibit #1).

7. The claimant was offered the chance to sign the First Noncompliance Letter (DHS-754) to continue her participation with WF/JET without losing benefits. The claimant declined to sign the form and requested a 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 (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.

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 was required to put in 20 hours for each week of her WF/JET program participation. The claimant does not dispute that she didn't get the full amount of hours each week, however, she indicates that she had extenuating circumstances that prevented her from putting in the required amount of hours each week. The claimant testified that she had to move during this time because she was evicted. To support this, the claimant provided a Demand for Possession Nonpayment of Rent, dated February 1, 2009. The claimant testified that she had to move and that it took her three days to do so, which kept her from being able to put in all her hours the week of February 1, 2009.

The claimant also testified that her son had a doctor appointment on [REDACTED] and provided a copy of the progress notes from the physician. The progress notes do not indicate what time the appointment was at or how long it lasted.

The claimant provided testimony that her father, who watches her children while she is at WF/JET, was taken to the hospital and diagnosed with scabies on February 8, 2009. The claimant provided discharge instructions for her father, which do indicate he was treated for scabies on Sunday, February 8, 2009 at [REDACTED] hospital. The claimant testified that she wasn't sure if her children had been exposed to the scabies, so she couldn't bring them to any other day care provider and that her father couldn't watch them because he was infected. It is

noted that under instructions, number four states “[y]ou may return to school or work after one treatment with scabies medicine.”

The claimant also testified that the department didn’t give her credit for her hours with [REDACTED]. The claimant provided a piece of paper that indicates a financial aid meeting on Thursday, February 12, 2009, at 12:00 pm, with a next appointment on Wednesday at 2:00 pm. However, this form does not even have the claimant’s name on it. Further, the claimant did not provide any evidence that she actually went to the meetings. However, even if the claimant was given the credit for these meetings, she wouldn’t have come close to meeting her weekly requirements.

Department policy indicates that all work-eligible individuals must work or engage in employment and/or self-sufficiency-related activities. PEM 233A. If a claimant fails, without good cause, to participate the number of hours required, the case can be closed and a penalty period (of three to twelve months) imposed. PEM 233A. In this case, the claimant does not dispute that she was noncompliant, but indicates she should have been granted good cause for her absences.

Good cause is defined by departmental policy as a valid reason for noncompliance that is based on factors that are beyond the control of the noncompliant person. The illness or injury of an immediate family member, no child care and unplanned events or factors are examples of good cause for noncompliance. PEM 233A. In this case, the claimant claims each of these as indicated earlier. However, this Administrative Law Judge does not find that the claimant’s reasons amount to good cause for the amount of hours that she did not complete.

The claimant testified that it took her three days to move when she was evicted from her housing the week of February 1, 2009. First, it is questionable to this Administrative Law Judge

why it would take three days to do this. However, even if I accept that it did take three days, the Demand for Possession Nonpayment of Rent document indicates that she has seven days to pay the rent or move out and is dated February 1, 2009. Thus, the claimant would have had until February 8, 2009, to move out. This includes a Saturday and Sunday, when the claimant wouldn't have been able to attend WF/JET anyway. The claimant did not attend on Thursday or Friday at all. There does not seem to be any reason why the claimant couldn't have worked on Thursday and, at least, part of Friday and then moved her items on the weekend.

The claimant also indicates that her father's diagnosis and treatment of scabies caused her to be unable to participate in WF/JET activities as her father was her daycare provider. The claimant did not attend on Monday, February 9, 2009, did attend on Tuesday, February 10, 2009, and then did not attend on Wednesday, February 11, 2009, attended for one hour on Thursday, February 12, 2009, and did not attend on Friday, February 13, 2009. The claimant indicates that she was unable to get her hours in this week due to her father's illness. However, it is noted on the discharge instructions that the patient (claimant's father) could return to work or school after one treatment with the medication. Clearly, the claimant's father would have begun his treatment with the medication on [REDACTED] when he was seen at the hospital. Thus, according to the discharge instructions, he should have been able to resume watching the children by the next day. The claimant provides no doctor's slips or instructions indicating that her father had to be isolated from the children any longer than what is indicated in the discharge instructions.

Thus, this Administrative Law Judge finds that the claimant was noncompliant with her WF/JET program participation requirements, and that she did not have good cause for her many absences.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly found the claimant to be noncompliant with WF/JET program requirements in March 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: May 6, 2009

Date Mailed: May 6, 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 

cc:

