

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.: 2009-17168
Issue No.: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 20, 2009
Washtenaw County DHS (20)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing received by the Department on March 12, 2009. After due notice, a hearing was conducted from Ypsilanti, Michigan on May 20, 2009. The Claimant appeared, along with her attorney, [REDACTED], and testified. [REDACTED] [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly terminated the Claimant's FIP case based upon a failure to participate in the Jobs, Education, and Training ("JET") program?

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 recipient.

2. On February 20, 2009, the Department sent a Notice of Non-Compliance to the Claimant notifying her of a scheduled triage on February 26th. (Exhibit 1)
3. The Claimant's case was pended for closure. (Exhibit 4)
4. On February 26th, the Department determined good cause was not established for the Claimant's failure to verify continued employment. (Exhibit 2)
5. On February 26, 2009, the Claimant's initial negative action was deleted.
6. The Claimant was given until March 9, 2009 to provide the requested employment verifications to the Department. (Exhibit 3)
7. On or about this same date, the Department pended the Claimant's FIP benefits for closure effective March 10, 2009. (Exhibit 5)
8. The Claimant attempted without success to reach the Department to discuss exactly what documentation was necessary.
9. The Claimant and the Department first spoke on March 9th, whereby the Claimant was instructed to hand deliver the names, telephone numbers, and payment received for services rendered for the last 10 days.
10. Shortly after 3:00p.m. on March 9th, the Claimant submitted a list of the clients she serviced with telephone numbers as well as the income earned for the last 4 to 5 weeks. (Exhibit 6)
11. The verification was not "100%" complete as a couple of the client's telephone numbers were missing and the Claimant did not hand deliver the documentation to her case worker.
12. Prior to 5:00p.m., the Claimant left a message on her caseworker's telephone providing the missing telephone numbers.

13. The Claimant's FIP benefits were terminated effective midnight, March 10, 2009.
14. On March 12, 2009, the Department received the Claimant's written request for hearing protesting the termination of her FIP benefits.

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 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").

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. PEM 233A, p. 1 The Family Self-Sufficiency Plan ("FSSP") was created to allow DHS and other DHS client service providers to share information about mutual clients for optimal case management. PEM 228, p. 1 The FSSP seeks to assist clients to achieve self-sufficiency, whenever possible, by identifying and removing barriers. PEM 228, p. 1 All Work Eligible Individuals ("WEI"), unless deferred, are required to engage in employment or participate in other approved activities. PEM 230A, pp. 1, 4 The WEI is considered non-compliant for failing or refusing to appear and participate with the Jobs, Education, and Training Program ("JET") or other employment service provider. PEM 233A, p. 1

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. PEM 233A, p. 7

In processing a FIP closure, the Department is required to send the client a notice of non-compliance, DHS-2444, which must include the date(s) of the non-compliance; the reason the client was determined to be non-compliant; and the penalty duration. PEM 233A, p. 8 In addition, a triage must be held within the negative action period. *Id.* A good cause determination is made during the hearing and prior to the negative action effective date. *Id.* 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. PEM 233A, p. 3 Good cause must be verified and documented and may be based upon information already contained in the file. PEM 233A, pp. 3, 7, 8 Good cause exists when a client is physically or mentally unfit for the job or activity as shown by medical evidence or other reliable information. PEM 233A, p. 3 Good cause is based upon the best information available during the triage and prior to the negative action date. PEM 233A, p. 7 If the client does not provide a good cause reason within the negative action period, good cause is determined based upon the best information available. PEM 233A, p. 11 Failure to comply without good cause results in FIP closure. PEM 233A, p. 5

For a client's first non-compliance, the Department will offer the opportunity to comply by the due date listed on the DHS-754, the First Noncompliance Letter. PEM 233A, p. 10 The noncompliance will be excused, but not erased, and could result in longer sanctions if the client is not in compliance in the future. *Id.* If the client accepts the offer to comply, the initial negative action is deleted and a new negative action is entered if the compliance activity cannot be completed before the FIP case closure takes effect. *Id.* The client is advised that verification of the compliance is required by the due date on the DHS-754. *Id.* If the client fails to meet or

contact the FIS within the negative action period or fails to provide verification of compliance without good cause, the three-month sanction is applicable. PEM 233A p. 11

Clients must cooperate with the local office in determining initial and ongoing eligibility to include the completion of the necessary forms. PAM 105, p. 5 Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. PAM 130, p. 1 Client's are allowed 10 calendar days (or other time limit specified in policy) to provide the requested verifications. PAM 130, p. 4 If the client cannot provide the verification despite a reasonable effort, the time limit should be extended no more than once. *Id.* A negative action notice is sent when the client refuses to provide the requested verifications or the time period has lapsed for the request and the client has not made a *reasonable* attempt to provide it. *Id.*

In this case, the Department requested updated verifications regarding the Claimant's self employment. The requested information was not received resulting in a Notice of Noncompliance. During triage, the Department determined that good cause was not established and the Claimant was offered an opportunity to comply by submitting the requested verifications by March 9, 2009. The Claimant's case was pended for closure effective midnight, March 10th. The Department acknowledged the Claimant's attempts to contact the Department to determine exactly what documentation was needed however the parties did not speak until March 9th, the date the verifications were due. The Claimant, who was asked to bring in a list of her clients, along with telephone numbers and income received from each for the last 10 days, brought in just over one month of information. The Department contends that the Claimant was specifically told she had to be 100% compliant and that she was to hand deliver the requested information to her case worker. The Claimant brought in the verification as requested but did not hand deliver

it. In addition, two of the client's telephone numbers were missing. The Claimant left these telephone numbers on her case worker's answering machine within a couple of hours of dropping of the verifications. The Claimant's FIP benefits were terminated because the Claimant was not 100% compliant.

Ultimately, it is found that there was no evidence that the Claimant had refused to cooperate or was otherwise noncompliant pursuant to department policy. Under these facts, the Department's actions are not upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly closed the Claimant's FIP case. Accordingly, it is held:

1. The Department's determination to terminate the Claimant's FIP benefits effective March 10, 2009 is REVERSED.
2. The 3-month FIP sanction for JET non-compliance is not imposed.
3. The Department shall reinstate the Claimant's FIP benefits from the closure date and supplement the Claimant for any lost benefits she was otherwise eligible and qualified to receive in accordance with department policy.

/s/
Colleen M. Mamelka
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/21/09

Date Mailed: 05/21/09

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 60 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.

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