

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: 2009-17273

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 28, 2009

Clare 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 28, 2009. The claimant personally appeared and testified, along with her husband, [REDACTED]

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits for Work First/Jobs, Education and Training noncompliance 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 and her husband were FIP benefit recipients. The claimant's husband, [REDACTED] was medically deferred from WF/JET participation.

2. The claimant was issued a Verification Checklist (DHS-3503) on January 30, 2009, requiring the claimant or her husband to submit updated medical information on a Medical Needs form (DHS-54A) and a Medical Examination Report (DHS-49) by [REDACTED] (Department Exhibit #4).

3. Neither the claimant nor her husband turned in updated medical information to the department.

4. Because no documentation for a medical deferral was received, the claimant's husband was mailed a Work First/Jobs, Education and Training Appointment Notice (DHS-4785) scheduling him to attend WF/JET on February 17, 2009. In the form under "additional information" it states "you failed to return medical documentation verifying your disability. Attendance at Work First is mandatory. Failure to attend may result in case closure." (Department Exhibit #3).

5. The claimant's husband did not attend the WF/JET appointment. The claimant and her husband were mailed a Notice of Noncompliance (DHS-2444) on February 24, 2009, scheduling a triage appointment for him on March 5, 2009 (Department Exhibit #2).

6. The claimant did not attend the triage appointment and no good cause was granted for the WF/JET noncompliance (Department Exhibit #1).

7. The FIP benefit case closed on March 10, 2009, and the claimant's request for hearing was received by the department on March 20, 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).

Department policy states:

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. PAM, Item 105, p. 5.

Client Cooperation

The client is responsible for providing evidence needed to prove disability or blindness. However, you must assist the client when they need your help to obtain it. Such help includes the following:

- . Scheduling medical exam appointments
- . Paying for medical evidence and medical transportation
- . See PAM 815 and 825 for details. PEM, Item 260, p. 4.

A client who refuses or fails to submit to an exam necessary to determine disability or blindness **cannot** be determined disabled or blind and you may deny or close the case. PEM, Item 260, p. 4.

Refusal to Cooperate Penalties

All Programs

Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. PAM, Item 105, p. 5.

Timeliness Standards

All Programs (except TMAP)

Allow the client 10 calendar days (**or** other time limit specified in policy) to provide the verification you request. If the client cannot provide the verification despite a reasonable effort, extend the time limit at least once. PAM, Item 130, p. 4.

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed and the client has not made a reasonable effort to provide it. PAM, Item 130, p. 4.

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 and her husband indicate that the husband is medically deferred from WF/JET participation. The department agrees that the claimant's husband was initially deferred from WF/JET participation. There was some delay in getting the claimant's husband referred to Michigan Rehabilitation Services (MRS) because [REDACTED] wasn't fully functioning yet and couldn't initially accept WF/JET referrals. The claimant's husband remained deferred for this period of time. The department testified that once the claimant's husband was evaluated by MRS, MRS determined they could not work with the claimant. In the meantime, the claimant's husband's application for SSI was denied.

In January of 2009, when the claimant was going to be referred to the Medical Review Team (MRT), the medical documentation for the claimant was ten months old, as the documentation was from March, 2008. Thus, the department issued the claimant a Verification Checklist (DHS-3503) requiring the claimant's husband to submit current medical documentation. The claimant and her husband do not dispute that they did not provide the medical documentation. Further, the claimant and her husband also admit that they did not call the department to request an extension of time to submit the forms or for help in obtaining the documentation.

Department policy indicates that claimants are responsible for providing evidence to prove disability. PEM 105, 260. Claimants that do not submit to an exam to determine disability can not be found disabled and the department is authorized by policy to close their case. PEM

260. Because the claimant's husband was going to be referred to MRT, up-to-date medical information was necessary for the department to properly evaluate the claimant's husband. The department followed policy by issuing a Verification Checklist (DHS-3503) and informing the claimant and her husband that the updated medical documentation was due to the department within 10 days. PAM 130. The claimant's husband testified that he did receive this form. The claimant and her husband could have been given an extension if they were having trouble having the forms completed, but, as they testified, neither of them requested one from the department. PAM 130. The claimant's husband testified that he didn't know he could request an extension from the department. However, the Verification Checklist (DHS-3503) clearly states on it "[c]all me right away if you...have any questions or problems getting the proofs. I will help you get the proofs if you ask for help....You must get the proofs to me or call me by the due date below. **If you do not, your benefits may be denied or cancelled.**" Thus, the claimant and her husband clearly had notice that they could call the case worker if they had problems getting the documentation.

In this case, because the program involved was WF/JET, the department referred the claimant's husband back to WF/JET as there wasn't current proof of his need for a medical deferral. The claimant's husband admitted that he did receive the notice to attend WF/JET. Even in this notice, the department indicates "[y]ou failed to return medical documentation verifying your disability. Attendance at Work First is mandatory. Failure to attend may result in case closure." The claimant's husband admits that he did not attend WF/JET, which is characterized in policy as noncompliance with WF/JET requirements. PEM 233A. His failure to attend the program resulted in a triage appointment for noncompliance. While the claimant's husband testified that he didn't receive the Notice of Noncompliance (DHS-2444), it was

properly addressed to the claimant and her husband's mailing address. 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). In this case, neither the claimant nor her husband indicated any problems with the mail delivery to their address. Further, it is noted that the claimant and her husband received all other correspondence that the department mailed. However, even if the claimant and her husband did not receive notice of the triage, they had received multiple notices of the need to turn in current medical documentation. Thus, this Administrative Law Judge finds that there was no good cause for the failure to report to WF/JET as contemplated by policy. PEM 233A.

It is noted that even as of the date of this hearing, the claimant and her husband have not had the medical documentation completed.

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 in March, 2009, for failure to comply with WF/JET participation requirements once the claimant and her husband failed to produce the required verifications to support a medical deferral.

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 29, 2009

Date Mailed: April 30, 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 [REDACTED]

cc:

[REDACTED]