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: 2009-17370
Issue No: 1038
Case No: [redacted]
Load No:
Hearing Date:
April 29, 2009
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 29, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for non-compliance with work-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's husband was a mandatory participant in the JET program.

(2) Claimant was an FIP recipient in Berrien County.

(3) Claimant's husband's activities are solely at issue in the present case; claimant's husband shall be referred to as claimant in the rest of the decision.

(4) Claimant himself was not receiving FIP benefits.

(5) Claimant was never able to prove citizenship, as required by policy, and as such, was not eligible to receive FIP benefits.

(6) However, as the legal parent of a dependent child in the household receiving FIP benefits, claimant was considered a mandatory group member.

(7) Claimant, though ineligible for FIP benefits, was still a mandatory JET participant.

(8) Claimant was considered a Work-Eligible Individual; BEM 230A states that WEI's do not necessarily need to be eligible for FIP grants.

(9) Policy states that all WEI's, unless deferred, must engage in work-related activities such as the JET program.

(10) On 3-6-09, claimant was referred to triage from JET for a failure to participate in work-related activities.

(11) On 3-19-09, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage for 3-25-09.

(12) Claimant attended the triage on 3-25-09, and no good cause was granted.

(13) Claimant alleged that his failure to participate was due to a psychological breakdown by his wife.

(14) Claimant did not submit evidence of medical good cause at the triage.

(15) Claimant submitted some documentation regarding difficulties experienced by his wife almost a month after the fact, but never submitted anything concrete with regard to his wife's condition.

(16) On 4-1-09, claimant's FIP case was closed for noncompliance, and a 1 year sanction was applied; this action was deleted pending the outcome of the hearing.

(17) On 3-25-09, claimant requested a hearing.

(18) At the hearing, claimant challenged the legality of the Department's action in placing claimant in the JET program in the first place.

(19) This is claimant's third alleged issue of noncompliance.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless 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 to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called "noncompliance". BEM 233A defines noncompliance as failing or refusing to, without good cause:

> …Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider... BEM 233A pg. 1.

However, failing to participate with work-related activities can be overcome if the client has "good cause". Good cause is a valid reason for a failure to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participating person. BEM 233A. A claim of good cause **must be verified and documented.** BEM 233A states that:

> Good cause includes the following…
>
> **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….

The penalty for noncompliance is FIP closure and a case sanction, the length of which is determined by the number of case penalties claimant has accrued. BEM 233A. Claimants under case sanction are ineligible for FIP benefits.

JET participants cannot be terminated from a JET program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date. BEM 233A.

If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

Prior to the close of the hearing, claimant challenged the legality regarding his assignment to the JET program. Specifically, claimant requested an answer as to why, if he was not eligible for FIP benefits in the first place, must he be compliant with work-related activities?

Before any consideration as to good cause can be given, we must first address our threshold issue as to whether the claimant was required to attend JET in the first place.

The Department contended that its hands were tied in the matter; policy dictated that the claimant was a mandatory FIP group member, and all WEI's in an FIP group must participate with JET.

It is generally uncontested that the claimant was not eligible for FIP assistance. According to the Department, claimant had failed to provide a birth certificate. BEM 225 states that U.S. citizenship must be verified for FIP applicants. Furthermore, the policy states shortly thereafter that a person who is unable to obtain verification of citizenship, or refuses to cooperate in obtaining such verification, is disqualified from receiving FIP assistance. It was unclear at the time of the hearing as to exactly why claimant could not provide proof of citizenship; however, the exact reason why is irrelevant. The Department stated that claimant had not provided proof of citizenship; claimant did not contest the issue.

Claimant did contest his JET requirements however. An examination of the law and policy used by the Department to refer claimant to JET shows that the Department followed policy in doing so.

Policy states that claimant was a required member of the FIP group. BEM 210, FIP Group composition defines the program group specifically as a child, and the "child's legal parent(s)". Claimant is the father of a child in the program group. Therefore, claimant is a defined as a member of the program group, regardless of whether he was receiving FIP assistance.

It is not necessary for an FIP group member to receive assistance; in fact, the policy at BEM 210 specifically contemplates program group members who are, in fact, disqualified. A program group means those persons living together whose income and assets must be counted in

determining eligibility for assistance. Disqualified members remain in the group. BEM 210. The purpose behind this policy is clear: if a child or other group member is living with a disqualified group member who is receiving a large income, it would defeat the purpose of the FIP program to pay benefits to the well off group. Everybody living in the family unit must be considered in the group, and their income must be taken into account. To do otherwise would invite abuse and fraud. Therefore, the Department was correct in identifying claimant as a mandatory FIP group member.

BEM 230A goes on to state that all Work-Eligible Individuals (WEIs) in the FIP group must participate in the JET program or other employment-related activities, unless temporarily deferred. The Department considered claimant a WEI, and assigned him to JET. Strangely though, BEM 230A never actually explains what a WEI is.

For that, we must turn to BEM 228, which defines WEI as:

> FIP/RAP clients who count in the state and/or federal work participation rate...WEIs include all FIP/RAP clients, except those listed under Non-Work Eligible individuals.

From these definitions, it appears that all FIP clients are WEIs, and all WEIs must participate in JET. Furthermore, claimant's situation is not one that is contemplated in the definition of non-WEIs. BEM 228. Thus, claimant's contention can be summed up as this: Should claimant be considered a WEI?

Were claimant living by himself, or not a father to a child living in the home, the answer would clearly be "no". However, as a mandatory FIP group member, the Department is clearly considering claimant an FIP client, regardless of the fact that claimant is not actually receiving assistance. As an FIP client, claimant is then automatically considered as a WEI, and as such, must be referred to JET.

However, claimant disputes this definition. When arguing that he shouldn't be required to attend JET, he is specifically arguing that he should not be considered a WEI. Claimant strikes the reasonable stance that, while he may have been a mandatory group member, he was not an FIP client per se, and as such was not a WEI. As WEIs are defined as "all FIP clients", claimant would therefore be arguing that he was not an FIP client, and therefore, was not a WEI.

Unfortunately, policy disagrees with the claimant's argument. BEM 228, when defining non-WEIs, makes this note:

> Non-WEIs include all the following:
>
> - An adult FIP/RAP client who is disqualified due to alien status.
>
> **Note:** All other disqualified adults are WEIs.

This item is reiterated in BEM 230A:

> A person that is not eligible for cash assistance due to alien status is not a WEI and is not referred to employment services and is not required to engage in employment-related activities. **However, all other disqualified members are WEIs and must be referred unless temporarily deferred.**

It is worth noting that the bolded section is bolded in the original item; the manual item wished to make extremely clear that all other disqualified group members, regardless of the reason they were disqualified, are WEIs. One would assume that this would include those disqualified because they were unable to prove their citizenship. While the Administrative Law Judge can personally take issue with this policy—it seems clear that the policy stating that aliens are not WEIs can be easily circumvented by stating that they were unable to prove citizenship—the policy is what it is, and in this case, it specifically casts claimant as a WEI. As shown above, all WEIs must engage with JET, and therefore, the Department was following policy when they referred claimant to JET.

That being said, the Department may have followed policy, but was the policy itself correct? That is, was the policy correct in regard to state and federal law?

The Social Welfare Act, Act 280 of 1939, (MCL 400.1-400.122) is the state law that governs the Department of Human Services and all accompanying benefit programs. All policy items must be supported by state and federal law. Should the policy disagree with a section of state law, the policy must be changed to accurately reflect state law. Therefore, while it is true that the Department was following policy, it is possible that the policy itself was illegal, and is thus in need of revision.

The Social Welfare act states:

> …Except as provided in section 57b, at the time the department determines that an individual is eligible to receive family independence assistance under this act, the department shall determine whether that individual is eligible to participate in the work first program or if the individual is exempt from work first participation under this section. MCL 400.57f.

Section 57b, as referred to by this section, refers to individuals who are commonly defined as non-WEIs in the department policy. We have already determined that claimant does not meet the definition of a non-WEI, and thus, section 57b is inapplicable.

However, section 57f, which defines who shall be referred to JET, is perfectly applicable to the claimant.

The Department's policy states that all mandatory FIP group members, regardless of whether they are eligible for assistance, must be referred to the JET program. However, section 57f states the Department shall determine claimant's JET eligibility "at the time the department determines that an individual is eligible to receive family independence assistance". In other words, when a claimant is deemed eligible to receive FIP benefits, the Department decides whether a claimant should be referred to JET. Therefore, conversely, if a claimant is never deemed eligible to receive such benefits, a referral to JET cannot be made.

This is in direct opposition to the DHS policy—under policy, an individual is referred to JET regardless of whether they can receive benefits. Therefore, on first inspection, it appears that the Department policy contained in BEM 228 and BEM 230A is in direct violation of state law, and must be overturned.

However, as FIP is funded through block grants from the Temporary Assistance to Needy Family program, which is administered by the federal government, an analysis of federal law must be conducted as well. This law is contained in the Code of Federal Regulations, Chapter 45, Parts 261, 262, 263 and 265 (45 CFR Parts 261, 262, 263, 265).

Section 261.2 defines Work Eligible individual as:

> (1) *Work-eligible individual* means an adult (or minor child head-of household) receiving assistance under TANF or a separate State program or a non-recipient parent living with a child receiving such assistance unless the parent is:
>
> (i) A minor parent and not the head-of-household;
>
> (ii) A non-citizen who is ineligible to receive assistance due to his or her immigration status; or
>
> (iii) At State option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits or Aid to the Aged, Blind or Disabled in the Territories.
>
> (2) The term also excludes:
>
> (i) A parent providing care for a disabled family member living in the home, provided that there is medical documentation to support the need for the parent to remain in the home to care for the disabled family member;
>
> (ii) At State option on a case-by-case basis, a parent who is a recipient of Social Security Disability Insurance (SSDI) benefits; and
>
> (iii) An individual in a family receiving MOE-funded assistance under an approved Tribal TANF program, unless the State includes the Tribal family in calculating work participation rates, as permitted under § 261.25.

This definition is informative; neither policy nor state law gave an adequate definition of what was meant by WEI. Here, we see that a WEI was specifically contemplated, for the purpose of an FIP grant, to mean an adult receiving FIP, **OR, a non-recipient parent living with a child receiving such assistance.**

This is extremely important for our analysis. Claimant contends that he should not have been considered a WEI, because he was not an FIP client for the purposes of the policy. He was not receiving benefits, and state law explicitly states that one must be found eligible to receive benefits in order to be referred to JET.

However, here we see that federal law, the law that governs the assistance itself, and mandates the standards for such assistance to the states, explicitly says that any non-recipient parent living with a child receiving FIP is considered a WEI. Therefore, while claimant may not be a WEI under state law, he most certainly is under federal law. Furthermore, while the policy is in contradiction with state law, the policy is legal under federal law.

As the federal government actually governs the grants that create the FIP assistance, the Supremacy Clause of the United States Constitution applies, also known as the legal doctrine of preemption. This basic doctrine, in layman's terms, states that when there is a conflict between federal and state law, federal law applies in matters in which the federal government has authority. The FIP program is administered through the federal TANF program. Therefore, the federal law is controlling in this situation.

As such, claimant must be considered a WEI, and thus, must be deemed eligible to be referred to the JET program. Furthermore, and examination of the comments that accompanied this law shows that the government specifically intended for somebody in claimant's situation to be considered a WEI:

> …More importantly, we strongly believe that it is in the best interest of the children in such families if States engage the parents in work activities, helping them off welfare and out of poverty. Thus, we have not made the suggested changes. Federal Register, Vol. 73, No. 94, pg. 6797, February 5th, 2008.
>
> *Comment:* A few commenters urged us to exclude from the definition of ''work-eligible'' all parents who are not in the assistance unit. Some asserted that not doing so creates an incentive to impose full-family sanctions and ignores the impact such policies have on children.
>
> *Response:* We did not exclude all parents who are not in the assistance unit because Congress specifically directed HHS to specify the circumstances under which a parent residing with a child who is a recipient of assistance should be included in the work participation rates. Since parents who were themselves recipients of assistance were already part of the rates (other than those subject to either of two special statutory exclusions), it was apparent that Congress intended us to look at families in which the parent did not receive TANF assistance but the child did. In addition, as we explained in the preamble to the interim final rule, we considered in turn each type of family in which a parent resides with a child recipient of assistance to determine whether it was appropriate to include that group of families in the calculation of the work participation rates. We believe that our definition appropriately focuses on those parents who can benefit from work activities and whose participation will help move the family into employment and out of poverty. Federal Register, Vol. 73, No. 94, pg. 6797, February 5th, 2008.

Therefore, for the reasons stated above, the Administrative Law Judge holds that the policy as administered by DHS is correct and sees no reason to issue a proposed decision overturning the regulations contained in BEM 228 and BEM 230A. Furthermore, the claimant was properly considered a WEI, and as such, was legally required to attend JET. Our attention must thus turn to whether the claimant had good cause for his failure to participate with the JET program.

BEM 233A specifically states that a claim of good cause must be verified and documented. Claimant did neither.

Claimant testified that his wife had been ill during the dates in question, and had a psychological breakdown. Claimant testified that his wife had had some serious problems during the time period of his failure to participate, which necessitated his care.

The Administrative Law Judge has no reason to doubt claimant's allegations, and in general, given evidence submitted a month later, believes this to probably be the case. However, as of the time of the triage, and the date of the negative action, no evidence of any sort was provided.

Because claimant did not verify his good cause by the negative action date, 3-31-09, claimant could not legally be allowed to have good cause. This is not a judgment on claimant's credibility; the regulations clearly state that any claim of good cause must be verified and no verifications were presented by the negative action date. The test that must be used is whether the Department's decision at the time of the action, using the information they knew, or should have known, was correct. In the current case, the Department had no knowledge regarding claimant's good cause. Therefore, as no good cause has been presented, the Department's decision must be correct.

With regard to the letter claimant presented that allegedly documented good cause, the Administrative Law Judge only notes that it was dated on April 23rd, 2009, several weeks after the Department had made its decision. As stated, the undersigned is only contemplating what was known by the Department at the time it made its decision. This letter was not even written at the time the Department made its decision, and therefore, is not particularly relevant to the discussion.

That being said, given the length of proposed sanction, the undersigned feels that he would be remiss if he did not give the letter some nominal consideration to determine whether it shows good cause. However, upon examination, the undersigned cannot grant good cause on the

basis of the letter. As noted above, the letter is dated April 23rd, several weeks after the alleged incident of non-participation. The letter contains no dates or references to the participation issue, nor does it state exactly what the claimant's wife's problems are. It does not say if claimant's wife was having issues during the time period in question, only that she has "difficulties acting outside the home". Therefore, the undersigned cannot grant good cause based upon this letter.

While the undersigned fully admits that his good cause standards are far more lenient than most, this letter stretches even those standards to the breaking point; there is simply nothing contained within the letter that the Administrative Law Judge can point to as a reason to award good cause. This is not to say that the claimant is not credible with regard to his reasons for good cause; however, without some sort of proof that can show good cause, the Administrative Law Judge is unable to find good cause.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not have good cause for his failure to attend the JET program during the month of January, February and March, 2009. The Department was correct when it closed claimant's FIP case and placed it under sanction.

Accordingly, the Department's decision in the above-stated matter is, hereby, AFFIRMED.

/s/_____
Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 18, 2009

Date Mailed: August 19, 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.

RJC/cv

cc: [redacted]