

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: 2009-17523

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 6, 2009

Washtenaw 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 May 6, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine that the claimant's Family Independence Program (FIP) benefits be terminated due to Work First/Jobs, Education and Training (WF/JET) 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 had been deferred since October, 2008 from WF/JET participation due to her son's medical needs (Department Exhibit #3, 9).

2. The claimant was mailed a Verification Checklist (DHS-3503) on December 30, 2008 (to the [REDACTED] address), requesting the claimant submit a new DHS-54-A Medical Needs form by January 10, 2009 (Department Exhibit #18, 19)

3. The claimant applied for State Emergency Relief (SER) relocation services on January 7, 2009, because her home had had a fire (Department Exhibit #15, 16).

4. The claimant provided the department with a copy of a SOS Community Services letter dated January 10, 2009, that indicated the claimant's new address was [REDACTED] [REDACTED] (Department Exhibit #17).

5. The claimant was mailed a second Verification Checklist on January 19, 2009 (to the Packard Road address), requesting a DHS-54-A Medical Needs form be completed and submitted to the department (Department Exhibit #13).

6. The department mailed the claimant a Verification Checklist (to the [REDACTED] [REDACTED]) on January 22, 2009, requiring the claimant to turn in a DHS-54-A Medical Needs form and enclosing a JET Appointment Notice (DHS-4785) setting her appointment date with JET for February 2, 2009 (Department Exhibit #11, 12).

7. On February 20, 2009, the department mailed the claimant a Notice of Noncompliance (DHS-2444) which indicated the claimant had not shown up to JET by February 12, 2009, and scheduling her triage appointment for February 26, 2009 (Department Exhibit #7, 8).

8. On February 23, 2009, WF/JET notes indicate the claimant showed up for JET orientation, but was referred back to DHS because her last day to attend the orientation had been February 12, 2009 (Department Exhibit #3).

9. The claimant testified that she took the medical forms to her son's doctor on [REDACTED] and that the doctor's office indicated to her that they had faxed the forms to DHS on February 10, 2009 (Claimant Exhibit #20 – 22).

### 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.

### **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.

#### **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.

#### **Obtaining Verification**

##### **All Programs**

Tell the client what verification is required, how to obtain it, and the due date (see “**Timeliness Standards**” in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.

The client must obtain required verification, but you must assist if they need and request help. PAM, Item 130, p. 2.

### **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.

The claimant does not dispute that she was noncompliant with WF/JET requirements, but indicates that she had good cause for her noncompliance. The claimant testified that she experienced a house fire and had to have her mail delivered to her mother's house. The claimant further testified that her mother didn't call her and tell her about the WF/JET appointment until the weekend prior to February 23, 2009, when she finally showed up at WF/JET. The claimant also testified that she should have been medically deferred from WF/JET participation as her son is disabled and requires her to care for him. The claimant indicated that she provided medical forms to her son's doctor's office and the doctor's office informed her they had faxed the forms to the department.

Noncompliance is defined in policy as failing to appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider without good cause. PEM 233A. Good cause is defined as 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. Department policy lists "unplanned event

or factor” as a good cause reason. PEM 233A. A house fire would qualify as an unplanned event or factor.

The claimant indicates that she had a house fire and her mother was receiving her mail, so she didn't get the notice to attend WF/JET until her mother called her the weekend prior to February 23, 2009, and told her she had to attend. However, this is not accurate according to the department exhibits. The claimant changed her address to her new residence prior to receiving the WF/JET appointment notice. The Verification Checklist and JET Appointment Notice was mailed on January 22, 2009, to the claimant's own address on [REDACTED]. This is the claimant's current address and the address she moved to after the house fire, not her mother's address. The SOS Community Services form dated January 10, 2009, confirms this as the claimant's new address where she will be residing (Department Exhibit #17) Thus, the claimant would have received the notice to attend WF/JET at her residence, not at her mother's house. Therefore, this Administrative Law Judge does not find that the house fire precluded the claimant from receiving the notice of her WF/JET appointment.

The claimant also indicates that she should have been medically deferred from WF/JET participation due to her son's medical condition. The claimant had been medically deferred to help care for her son in October, 2008. The department requested updated medical information beginning in December, 2008 by mailing three Verification Checklists to the claimant. The first Verification Checklist requesting updated medical documentation was sent to the claimant prior to the house fire. Therefore, she should have received this request. The second Verification Checklist was mailed to her mother's house on January 19, 2009. The third Verification Checklist was mailed to the claimant's new home address (after the relocation from the house fire) on January 22, 2009. The claimant admitted in her testimony that she did receive the medical forms for her son to be completed by her son's doctor.

Department policy indicates that the department must inform the client what verification is required, how to obtain it, and the due date, by using the DHS-3503, Verification Checklist. PAM 130. The Verification Checklist was mailed to the claimant three separate times requesting medical verification of her son's condition. The department testified that they never received any medical verification from the claimant.

The claimant testified that her son's doctor's office completed the forms on February 10, 2009, and faxed them into the department. However, while the doctor's office provided her with the completed forms (which she submitted as evidence in this hearing), there was no verification provided that demonstrated the fax was actually sent. Further, the due date for the third and last verification was February 2, 2009. The documents were not even submitted to the doctor's office by the claimant until February 6, 2009, as the claimant testified, which is already after the due date. This seems to show the claimant did not make a reasonable effort to obtain the verifications within the required time limits.

Department policy indicates that the claimant is responsible to obtain and provide required verifications, but that the department must assist if a claimant needs and requests help. PAM 105, 130. If the claimant does not provide the required verifications, the claimant is subject to penalties. PAM 105. The department workers testified that the claimant never requested assistance in getting the medical forms completed or asked for any extension of time to provide the documentation.

This Administrative Law Judge finds that the claimant did have notice to submit the medical documentation for her son to allow the department to consider her for a medical deferral from WF/JET. However, despite being sent three Verification Checklists requiring the medical information, the claimant did not submit any documentation by the due date. Further, the claimant testified that she had the doctor's office complete the medical documentation on

February 10, 2009. If this were the case, the claimant could have brought the medical documentation to WF/JET when she showed up on February 23, 2009. The claimant did not ensure that the department had the necessary documentation to defer her from WF/JET participation. This Administrative Law Judge also finds that the claimant received notice of the WF/JET appointment and did not attend as required. Thus, the claimant was noncompliant with WF/JET program requirements without any good cause.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly concluded that the claimant was noncompliant with WF/JET program requirements and properly determined that the claimant's FIP case should be terminated for the noncompliance in March, 2009.

Accordingly, the department's actions are UPHeld. SO ORDERED.

/s/ \_\_\_\_\_  
Suzanne L. Keegstra  
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.

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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]