

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: 2009-17727

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 22, 2009

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on July 22, 2009. Claimant and her father personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's Family Independence Program (FIP) case based on noncompliance with her mandatory assigned Jobs, Employment and Training (JET) 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 is a single, learning disabled individual in Special Education throughout childhood who resides with her parents and her daughter in [REDACTED]

(2) In 2007, the department approved claimant eligible for FIP based on pregnancy; her daughter was born on September 3, 2007.

(3) Additionally, after the baby's birth claimant was not initially assigned to employment-related activities because she met the criteria then existing in the department's policy (BEM Item 230, pg 10) which permitted deferrals for individuals with low intellectual capacity and/or learning disabilities who had an active SSI/RSDI application pending.

(4) Claimant's SSI/RSDI application was still pending as of this hearing date, and also, she was being represented by an attorney in that matter (Client Exhibit A, pgs 1-5).

(5) By this time (2009), the department's policy had been revised to include SSI/RSDI applicants as mandatory, employment-related activities participants as long as reasonable accommodations could be made.

(6) Consequently, in January 2009, the department assigned claimant to participate in Job Club as her assigned activity (Department Exhibit #1, pg 3).

(7) Claimant's participation log reveals good effort, good attitude and good communication with the local office about her activities (Department Exhibit #1, pgs 2 and 3).

(8) In February 2009, claimant's JET case manager acknowledged claimant's inherent lack of basic job search skills despite good effort (Department Exhibit #1, pg 2).

(9) In February 2009, claimant contacted the local office and indicated she was participating in YOU instead of JET; the local office acknowledged YOU would only allow claimant's continued participation with their agency if she discontinued the JET activities (Department Exhibit #1, pg 10).

(10) When claimant decided to continue with YOU instead of JET, the department proposed to sanction her FIP case based on noncompliance.

(11) On March 20, 2009, the local office received claimant's timely hearing request protesting this sanction.

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).

The applicable departmental policy states:

Section 504 of the ADA define a disability as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency.

When a client requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements. BEM Item 230A, pg 2.

Under the facts and circumstances presented in this case, this Administrative Law Judge finds the local office prematurely proposed to impose a FIP sanction. The above-referenced policy clearly allows for modifications of assigned activities like the one that occurred in this case (from JET to YOU) because failure to do so undermines efforts to assist families in achieving self-sufficiency. As such, this Administrative Law Judge finds noncompliance has not been shown.

In closing, this Administrative Law Judge notes the department's witness indicated claimant could have been fully deferred from participation in any activity, if she had presented written verification from a qualified source. However, claimant's father indicated she had no treating provider, nor had she been seen for an independent psychological/psychiatric evaluation because she did not have the funds to do so. Again, the applicable departmental policy is clear:

DEPARTMENT POLICY

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- . Determine eligibility.
- . Calculate the level of benefits.
- . Protect client rights. PAM, Item 105, p. 1.

Verifications

All Programs

Clients must take actions within their ability to obtain verifications. DHS staff must assist when necessary. See PAM 130 and PEM 702. PAM, Item 105, p. 8.

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.

Assisting the Client

All Programs

The local office must assist clients who ask for help in completing forms (including the DCH-0733-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English. PAM, Item 105, p. 9.

Consequently, if claimant now wishes to pursue a medical deferral, the department must assist her in scheduling the necessary evaluation. Additionally, the local office should review claimant's current SSI/RSDI status and/or her current level of YOU participation to determine if it meets the participation requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department improperly proposed to close claimant's FIP case in 2009 based on JET noncompliance, because noncompliance has not been shown.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for the above-referenced actions. **SO ORDERED.**

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 29, 2010

Date Mailed: April 30, 2010

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 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.

MBM/db

cc:

