

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: 2009-17729

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 13, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

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 conducted from Lansing, MI on May 13, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. The Department appeared and testified - Brenda Philpot (FIM) and Shanneka Smith (FIS).

ISSUE

Did the Department correctly take action to terminate Claimant's Family Independence Program (FIP) benefits?

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 was a FIP recipient and a mandatory Work First/Jobs, Employment and Training (WF/JET) participant.

(2) On January 13, 2009, the Department was informed by WF/JET that Claimant was in noncompliance with WF/JET requirements. (Exhibit 6)

(3) On March 2, 2009, the Department sent Claimant a Notice of Noncompliance which stated in pertinent part that its “Records show that you have refused or failed to participate as required in employment and/or self sufficiency related activities for FIP, RAP and FAP as noted below:” (The Dates and How You Did Not Comply sections were left blank.); “A meeting has been scheduled to give you an opportunity to report and verify your reasons for non-compliance. If you want to have a telephone meeting, please call to schedule it before you miss your scheduled appointment.....It is your responsibility to report and verify reasons for your actions. This is your opportunity to claim barriers that make it hard for you to work. If you do not contact me before the appointment date, I will make a good cause decision for you using the information available to me.” (Exhibit 3)

(4) Claimant called the Department prior to her scheduled appointment on March 12, 2009 at 11:30 a.m. and stated that she was not going to WF/JET because she was on medication for depression. The Department instructed Claimant that she must attend triage and then it would be determined if good cause existed at that time. The Department requested that Claimant provided medical documentation which Claimant did by putting medical documentation in the drop box on March 11, 2009. The Department’s position is that Claimant would have been referred to and evaluated by MRS during the triage meeting had she appeared. (Exhibit 1)

(5) Claimant did not attend the March 12th triage meeting. She testified that she called to ask the Department if she needed to attend the triage meeting or whether she could just drop off her medical documentation. She testified that the Department responded that she could drop

off her medical documentation and attend the triage if she wanted to do so. Claimant did not want to do so because she does not like to be in public places with people she does not know due to anxiety so she dropped off a Medical Needs, DHS-54a, in the drop box on the day prior to the hearing. (Exhibit 2)

(6) The Department found no good cause for Claimant's noncompliance with WF/JET and took action to terminate Claimant's FIP benefits effective March 14, 2009. (Exhibits 4,5,7)

(7) On March 23, 2009, the Department received Claimant's hearing request 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 (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).

Departmental policy states:

DEPARTMENT PHILOSOPHY

FIP, RAP Cash

Clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by DHS when the client applies for cash

assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments will be covered by the JET case manager when a mandatory JET participant is referred at application. PEM 229, p. 1.

DEPARTMENT POLICY

FIP, RAP Cash

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily 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 obtain stable employment.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) through the Michigan Works Agencies (MWAs). The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency.

A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1.

FIP

All Work Eligible Individual (WEI) and adult non-WEIs (except ineligible grantees, clients deferred for lack of child care (DC) and disqualified aliens, see PEM 228, who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

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 on the Family Self-Sufficiency Plan (FSSP).
 - .. Provide legitimate documentation of work participation.
 - .. Appear for a scheduled appointment or meeting relating to assigned activities.
 - .. 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.

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 not less than 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 not less than 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. PEM 233A, p. 6-7.

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.

Good cause includes the following:

Client Unfit

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 noncompliance. PEM 233A, p. 4.

LONG-TERM INCAPACITY

Defer persons with a mental or physical illness, limitation or incapacity expected to last more than 90 days and preventing their

participation in employment-related activities. Clients in this category may be referred to Michigan Rehabilitation Services (MRS) or the Commission for the Blind for consultation and may be eligible for ongoing services from those agencies. This includes:

- An individual with low intellectual capacity or learning disabilities that impede comprehension and prevent success in acquiring basic reading, writing, and math skills, including, but not limited to, an individual with an intelligence quotient less than 80.
- An individual with documented chronic mental health problems that cannot be controlled through treatment or medication
- An individual with physical limitations on his or her ability to perform routine manual labor tasks, including, but not limited to, bending or lifting, combined with intellectual capacity or learning disabilities. PEM 230A, p. 12

When a client states they are disabled or indicates that they may be unable to participate in work or JET because of a mental or physical condition, injury, illness, impairment or problem (including those who have applied for RSDI/SSI) at intake, redetermination or anytime during an ongoing benefit period, require the client to provide verification from their doctor (a DHS-49, Medical Examination Report or DHS-54a, Medical Needs may be used). PEM 230A, p.13.

TRIAGE

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. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. PEM 233A, p. 11

In the instant case, the Department offered the Update/View Case Notes prepared by three different WF/JET workers, but did not know specifically what it was that Claimant failed to do other than to state she was not participating. The case notes themselves are only general references of Claimant not maintaining full participation. That is probably the reason that the

Notice of Noncompliance does not state the dates or how Claimant did not comply. I do not find that the Department established that Claimant was in noncompliance under these circumstances. As to the issue of good cause, the Notice of Noncompliance clearly states that the Department would make a good cause decision using the information available to it. That certainly suggests to the reader that it is not a requirement to attend if he/she wanted to rely on the information already in the possession of the Department. In addition, Claimant testified that she was essentially told that she did not need to come to the triage. The caseworker who prepared the Hearing Summary and alleged told her that she must attend the triage was not present at the hearing. There is also no dispute that Claimant provided medical documentation a day prior to the triage, a Medical Needs DHS-54A, from her treating physician that stated that she could not work at her usual occupation or any job for a period of one year. The Department should have relied on the information available to it per policy and deferred Claimant or referred her to [REDACTED] for evaluation.

With the above said, I do not find that the Department established that it acted in accordance with policy in terminating Claimant's FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department did not act in accordance with policy in terminating Claimants' FIP benefits.

Accordingly, the Department's FIP eligibility determination is REVERSED. The Department shall:

(1) Supplement Claimant any benefits that she may be entitled to from the date of termination.

(2) Defer Claimant from WF/JET participation or refer her to [REDACTED] for evaluation and determination as to whether Claimant qualifies for a WF/JET deferment.

/s/ _____
Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 19, 2009

Date Mailed: May 20, 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 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.

SMB/db

cc: [REDACTED]