

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: 2009-21405

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 10, 2009

Bay 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 June 10, 2009. The claimant personally appeared and provided testimony, along with her husband, [REDACTED]

ISSUE

Did the department properly determine the claimant's Family Independence Program (FIP) case should be closed for two counts of Work First/Jobs, Education and Training (WF/JET) program noncompliance in April, 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 determined to be mandatory WF/JET program participants.

2. The claimant and her husband were responsible for participating 35 hours per week with WF/JET. The claimant agreed to perform 15 hours per week and her husband agreed to perform 20 hours per week. The form states “if the required weekly hours are not met, you are subject to triage and possible sanction by DHS. The parent not completing his or her agreed hours as stated in this document will be sanctioned. If neither parent completes his/her required hours, both may be sanctioned.” (Department Exhibit 4).

3. On March 26, 2009, WF/JET requested a triage be scheduled for the claimant and her husband due to the clients not meeting the federal participation requirement. (Department Exhibit 7).

4. On March 30, 2009, the department mailed the claimant and her husband a Notice of Noncompliance (DHS-2444), scheduling a triage appointment for April 7, 2009. (Department Exhibit 8).

5. Both the claimant and her husband attended the triage appointment, which was rescheduled for April 15, 2009. No good cause was granted for the noncompliance. (Department Exhibit 9).

6. The claimant’s FIP case was scheduled to close on April 23, 2009, but the claimant submitted a hearing request on April 17, 2009. The department deleted the negative action pending the outcome of the hearing.

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.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-related activities, etc. PEM 233A. In this case, the claimant and her husband dispute that they were noncompliant. The claimant and her husband testified that they would have gotten in the required amount of hours if the department had accepted their documentation when provided.

The department testified that the claimant and/or her husband were required to check in to WF/JET at 8:45 to turn in the previous day's job search logs. This was explained to the claimant's husband on March 23, 2009 (see department exhibit 10). The department also testified that the claimant's husband was approved for five hours on Monday evenings for welding classes and the claimant and her husband were approved for 2.5 hours for counseling on Tuesdays. The claimant and/or her husband were required to turn in the attendance sheets each week, which they had not been doing. The claimant's husband informed the department on March 23, 2009, that he would turn in the documentation concerning his training hours and counseling hours on Wednesday March 25, 2009. Neither the claimant nor her husband showed up at WF/JET on March 25, 2009. The claimant and her husband did not appear at WF/JET until Thursday March 26, 2009 at 12:15pm (the required check-in time is 8:45). At that time, they turned in documentation for two weeks of welding classes and seven weeks of counseling. The department disallowed the documentation as it was late and sent the claimants' to triage.

This Administrative Law Judge has reviewed all the documentation concerning the attendance, job search logs, welding classes and counseling sessions. Even if all of the hours were counted for the claimant and her husband, it would not have added up to their required 35 hours per week. For example, the claimant and her husband admitted in testimony that they were short by four hours the first two weeks of March, 2009. Further, even if the claimant and her husband had been given all of the credit for hours they hadn't provided documentation for, the claimant only had nine hours for the week of March 15 and 11 hours for the week of March 29, 2009. The claimant's husband would only have 15 hours for the week of March 15 and 16 hours for the week of March 22, 2009. This equals a total of 25 hours for the week of March 15 and 27 hours for the week of March 22, 2009. This is only 52 hours for two weeks. The claimant and her husband are required to do at least 70 each two weeks. Further, as the

claimant was required to perform 15 hours and the claimant's husband was required to perform 20 hours per week; neither the claimant nor her husband performed their required amount of hours either week.

This doesn't even consider the fact that the clients were not attending at the required times or turning in documentation as required by WF/JET. Case notes indicate that the claimant's husband met with the instructor on March 23, 2009, when he was informed he was to sign in by 8:45 am. He was also required to turn in his attendance documentation weekly for his welding classes and the counseling sessions. The claimant and her husband admitted that they did not turn in the attendance sheets weekly as required. The department had given the claimant's husband until Wednesday, March 25, 2009, to turn in the required documentation. However, neither the claimant nor her husband showed up or called WF/JET on March 25, 2009. They did not attend WF/JET until 12:15 pm on March 26, 2009. The department would not accept the documentation at that time as it was late.

The claimant and her husband were not participating for the required amount of WF/JET weekly hours. This is an example listed in policy as noncompliance. Further, the claimant and her husband were not turning in documentation as required and were not attending WF/JET at the required check-in time. These are all instances of noncompliance. Neither the claimant, nor her husband, provided any reasons which could be construed as good cause for the noncompliance. Good cause is defined by policy 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. The claimant and her husband provided no good cause reasons during the triage or at this hearing. Thus, the department properly determined the claimant and her husband did not have good cause for their noncompliance with WF/JET requirements.

Each participant's noncompliance counts as one instance of noncompliance. In this case, both the claimant and her husband were noncompliant as neither got in their required hours for multiple weeks. Thus, it is two instances of noncompliance. Department policy indicates that for the second occurrence of noncompliance on the FIP case, the department will close the FIP for three calendar months. PEM 233A.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that both the claimant and her husband were noncompliant with WF/JET program requirements and properly determined the claimant's FIP case should be terminated and sanctioned for three months.

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: July 1, 2009

Date Mailed: July 2, 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]