

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.: 2009-21407
Issue No: 1038
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 25, 2009
Wayne County DHS (59)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Detroit, Michigan on June 25, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly terminated the Claimant's FIP benefits based upon the Claimant's failure to participate in the Jobs, Education, and Training ("JET") program?

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 was a FIP recipient.
2. In January 2009, the Claimant was deferred from JET participation to tend to the special needs of her autistic child. (Exhibits, 1, 2)

3. On April 6, 2009, the Department sent the Claimant an appointment notice to participate in the JET program on April 13, 2009. (Exhibit 3)
4. On April 6, 2009, the Department sent a Verification Checklist to the Claimant informing her she needed to cooperate with the JET program or present documentation to support a continued deferral. (Exhibit 4)
5. On this same date, the Department sent the Claimant a Notice of Employment and/or Self Sufficiency Related Appointment/Assignment (“FSSP”) informing the Claimant that her previous deferral had ended and that an appointment was scheduled for April 17th . (Exhibit 5)
6. On this same date, April 6th, the Department sent the Claimant a Notice of Non-Compliance. (Exhibits 6, 7)
7. On April 6th, the Department pended the Claimant’s FIP benefits for closure effective April 18, 2009. (Exhibit 8)
8. The Claimant did not attend the JET orientation on April 13, 2009.
9. On April 16, 2009, the Claimant contacted the Department stating she had just received notification of the April 17th appointment and that she was unable to attend due to a previously scheduled evaluation for her child. (Exhibit 17)
10. The Claimant did not attend the April 17th FSSP appointment/triage.
11. On April 18, 2009, the Claimant’s FIP benefits were terminated.
12. On April 28, 2008, the Department received the Claimant’s written request for hearing protesting the termination of her cash assistance 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, formally known as the Family Independence Agency, 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”).

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. PEM 233A The Family Self-Sufficiency Plan (“FSSP”) was created to allow DHS and other DHS client service providers to share information about mutual clients for optimal case management. PEM 228 The FSSP seeks to assist clients to achieve self-sufficiency, whenever possible, by identifying and removing barriers. PEM 228 All Work Eligible Individuals (“WEI”), unless deferred, are required to engage in employment or participate in other approved activities. PEM 230A The WEI is considered non-compliant for failing or refusing to appear and participate with the Jobs, Education, and Training Program (“JET”) or other employment service provider. PEM 233A Failure to comply without good cause results in FIP closure. PEM 233A Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are based on factors beyond the control of the non-compliant person. PEM 233A A claim of good cause must be verified and documented. *Id.* Good cause exists when a client is physically or mentally unfit for the job or

activity as shown by medical evidence or other reliable information. *Id.* The first and second occurrences of non-compliance results in a 3 month FIP closure. PEM 233A

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. PEM 233A In processing a FIP closure, the Department is required to send the client a notice of non-compliance, DHS-2444, which must include the date(s) of the non-compliance; the reason the client was determined to be non-compliant; and the penalty duration. PEM 233A In addition, a triage must be held within the negative action period. *Id.* A good cause determination is made during the hearing and prior to the negative action effective date. *Id.*

In this case, the Claimant was previously deferred from JET participation due to her autistic child. On April 6th, the Department instructed the Claimant to participate in the JET program on April 13th or attended an appointment on the 17th to determine whether a further deferral was warranted. At this same, prior to any non-compliance from the Claimant, the Department sent a Notice of Non-compliance to the Claimant and pended her case for closure. Recognizing that the Department must provide timely and adequate notice of any negative action, policy does not allow for a case to be pended for closure *prior* to any non-compliance or non-cooperation by the client. In this case there was no action (or inaction), thus no non-compliance on behalf of the Claimant which warranted the negative action. Under this factual scenario, it is found that the Department failed to act in accordance with department policy when pended the Claimant's FIP case for closure prior to any non-compliance or failure to cooperate. Accordingly, the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly pended the Claimant's FIP case for closure.

Accordingly, it is held:

1. The Department's determination to terminate the Claimant's FIP benefits is REVERSED.
2. The 3-month sanction for non-compliance is not imposed.
3. The Department shall reopen the Claimant's FIP case from the date of closure and shall supplement the Claimant for any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.

/s/
Colleen M. Mamelka
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/29/09

Date Mailed: 06/30/09

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.

CMM/jlg

cc:

