

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: 2009-23312
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 2, 2009
Ionia 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 July 2, 2009. The claimant appeared via telephone conference call 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 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 was determined to be a mandatory WF/JET program participant. On November 3, 2008, the claimant signed the Work and/or Self-Sufficiency Rules for Cash Recipients. (Department Exhibit 1).
2. The WF/JET caseworker requested a temporary deferral for the claimant due to stressful situations occurring in her life on December 11, 2008. (Department Exhibit 3).
3. The claimant was granted a temporary deferral. (Department Exhibit 6).
4. On January 27, 2009, the department mailed the claimant a Verification Checklist (DHS-3503), indicating that her temporary deferral had now ended and that she needed to re-engage with WF/JET. (Department Exhibit 5).
5. The claimant did re-engage with WF/JET and participate and provide job search/job readiness activities as required. (Department Exhibits 7 – 23).
6. On March 4, 2009, the WF/JET worker sent the claimant an email indicating that she had not received the previous two weeks of participation documentation. (Department Exhibit 11).
7. The WF/JET case notes indicate that the claimant did not turn in participation documentation for the weeks of March 8 and March 15, 2009. (Department Exhibit 24).
8. The claimant was mailed a notice that she was failing to cooperate with WF/JET program requirements on April 1, 2009, which scheduled the triage appointment for April 7, 2009. (Department Exhibit 28).
9. The claimant did not attend the triage appointment and the department did not grant any good cause for the noncompliance. (Department Exhibit 29).
10. The department mailed notice to the claimant on April 8, 2009, indicating the claimant's FIP case would close on April 21, 2009. (Department Exhibit 31 – 34).

11. Due to a problem with the [REDACTED], which is verified by documentation from the United States Postal Service, the claimant did not receive her copy of the notice of triage appointment until April 7 or 8. (Department Exhibit 35).

12. The claimant came into the local DHS office on April 10, 2009 and was offered the opportunity to sign the First Noncompliance Letter (DHS-754) as this was her first instance of noncompliance. (Department Exhibit 36).

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 does admit that she missed a Michigan Rehabilitative Services appointment. The job search/job readiness documentation provided by the department is somewhat contradictory on what dates are missing. The documentation this Administrative Law Judge has reviewed shows the claimant failed to provide two weeks of job search documentation (week of February 15, March 15, 2009).

However, regardless of what the exact noncompliance was, the claimant was offered the opportunity to sign the First Noncompliance Letter (DHS-754), which she did sign on April 10, 2009. The claimant testified that she did complete her compliance test and perform the 30 hours of job search/job readiness. The department has presented no information which disputes this. The claimant provided testimony that after participating with WF/JET for a couple of weeks, she was told to stop and wait to see the outcome of the hearing before the department

re-assigned her to WF/JET. When the department staff member was questioned as to why this would occur when she had already signed a First Noncompliance Letter, he indicated he could not answer for WF/JET. As no staff member from WF/JET was present for this hearing, the question remains unanswered. The claimant did testify that she was still receiving her FIP grant, so it does appear that the department never closed her FIP case as the notice indicated.

Department policy is clear that in the first instance of noncompliance, the claimant is offered the First Noncompliance Letter. PEM 233A. In this case, the claimant did sign the First Noncompliance Letter and should have been re-engaged with WF/JET to continue her participation without sanction.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department appears to have properly left the claimant's FIP case active. However, if the FIP case has not remained active, the department is REVERSED. The department shall:

1. Ensure that the claimant's FIP case has remained open and active and issue any retroactive benefits if it was closed.
2. Re-engage the claimant with WF/JET.

SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 24, 2009

Date Mailed: August 26, 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 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 

cc:

