

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: 2009-24588
Issue No: 1038; 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 9, 2009
Clare 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 9, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits and sanction the claimant's Food Assistance Program (FAP) benefits due to Work First/Jobs, Education and Training (WF/JET) program noncompliance in May, 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 referred to Michigan Rehabilitative Services (MRS) because he claimed he could not participate with WF/JET due to medical issues. The claimant was scheduled for MRS appointments on December 3, 2008; December 18, 2008; and

January 5, 2009. The claimant did not appear for any of these appointments. The claimant did appear for a January 23, 2008, appointment. The claimant indicated that he couldn't work and that he didn't want any services from MRS because they wouldn't benefit him. (Department Exhibit 11A – B).

2. The claimant was then referred to the Medical Review Team (MRT). On March 26, 2009, MRT issued an assessment that indicates the claimant was not disabled and could work with some limitations in an unskilled position. The limitations were no commercial driving, no working at unprotected heights, no working around dangerous moving machinery and limiting exposure to dusts, gases and fumes. The claimant was not deferred from WF/JET participation. (Department Exhibit 10A – C).

3. The claimant was then mailed a WF/JET Appointment Notice on March 30, 2009, scheduling the claimant to attend WF/JET on April 13, 2009. (Department Exhibit 1).

4. The claimant did not attend the WF/JET orientation on April 13, 2009. (Department exhibit 2).

5. The claimant was then mailed another WF/JET Appointment Notice on April 13, 2009, giving him a second chance to attend orientation on April 20, 2009. (Department Exhibit 3).

6. The claimant did attend the orientation on April 20, 2009, but slept through the class and did not fill out the necessary paperwork. (Department Exhibit 4).

7. The claimant was mailed a Notice of Noncompliance (DHS-2444) on April 23, 2009, scheduling a triage appointment for May 1, 2009. (Department Exhibit 4).

8. A telephone triage was held with the claimant on April 29, 2009. The claimant stated he was compliant with WF/JET because he had attended the orientation. The department explained to the claimant that he was not compliant because he had slept through the orientation

and had not completed the necessary paperwork. Claimant indicated his lack of participation was a medical problem and that he can't attend WF/JET. Claimant was offered the opportunity to submit additional medical information to support a deferral. Claimant was told medical forms and a First Noncompliance Letter (DHS-754) would be mailed and he could complete them and return within ten days to keep his case from closing. (Department Exhibit 6).

9. The department mailed the claimant the First Noncompliance Letter (DHS-754); a Medical Needs form (DHS-54A); and a Medical Examination Report (DHS-49) on April 30, 2009. (Department Exhibits 7 – 8).

10. The claimant did not complete and return any of these forms.

11. The claimant's case was scheduled to close on May 23, 2009, however, the claimant submitted his hearing request on May 18, 2009, and the negative action was deleted pending 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).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10,

et seq., and MAC R 400.3001-3015. 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 disputes that he was noncompliant. Claimant testified that he attended WF/JET orientation. The department does not dispute that he attended

WF/JET orientation, but testified that he slept through the entire orientation and failed to complete the required paperwork. The claimant maintains that he has medical conditions that prevent him from effectively participating with WF/JET. Claimant points out that he has Sleep Apnea, COPD and Narcolepsy.

Department policy indicates that when a claimant is prevented from participating in WF/JET due to medical reasons and the condition is expected to last more than 90 days, the claimant should be referred to MRS. PEM 230A. In this case, the claimant was referred to MRS for a consultation. After failing to attend his appointment three separate times, he finally attended a fourth appointment. The claimant refused any services from MRS. The claimant's three missed appointments were noncompliance, according to department policy, and the claimant could have been triaged at that point. However, the claimant was given multiple opportunities and did finally attend the appointment. However, the claimant then declined MRS services. Department policy indicates that if the client was not responsive to employment information and gave no indication that employment was an option for them, the department is to obtain a medical determination from MRT. PEM 230A.

The claimant was referred to MRT according to policy. Department policy requires the department to refer a claimant to WF/JET if the MRT determines the claimant is work ready with limitations. PEM 230A. Thus, the department properly referred the claimant back to WF/JET when MRT determined he could work with some limitations. The claimant was then required to participate with WF/JET within the MRT noted limitations.

In this case, the claimant was noncompliant with WF/JET program requirements. The program requires the claimant to engage in the orientation and complete all paperwork required. The claimant can not be viewed as engaging in the orientation when he slept through the program and did not complete the necessary paperwork. Department policy defines

nonparticipation (in pertinent part) as failing or refusing to appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider. While the claimant may have appeared for WF/JET, he clearly did not participate as required. Thus, he is found to have been noncompliant with WF/JET requirements.

The claimant is not found to have any good cause for his noncompliance. Good cause is defined as 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. PEM 233A. Good cause can be allowed if a 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. PEM 233A. However, MRT had already determined that the claimant was capable of participating with WF/JET. There is no limitation specified by MRT that would exempt the claimant from engaging in class or preparing necessary paperwork. The medical evidence was reviewed by MRT and the claimant was determined to be able to participate in WF/JET. Thus, no good cause for the noncompliance is found.

It is noted that the claimant was given another opportunity to establish good cause and provide new medical information. Department policy indicates that if the claimant produces new medical information, the new information will be forwarded to MRT and a new determination will be made on the claimant's work ability. PEM 230A. The claimant did not submit any further medical documentation to the department prior to his case closure. He did submit the results of a sleep study to this Administrative Law Judge, but this was not presented to the department prior to this hearing.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined the claimant was noncompliant with WF/JET program requirements and properly determined the claimant's FIP benefits should close, accordingly sanctioning the claimant's FAP benefits.

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: August 3, 2009

Date Mailed: August 3, 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:

