

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: 2009-2649
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 10, 2008
Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 December 10, 2008. Claimant personally appeared and testified.

ISSUE

Did the department correctly terminate claimant's Family Independence Program (FIP) benefits in September, 2008?

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, Education and Training (WF/JET) participant when she called WF/JET staff on August 29, 2008 to say she had been fired from her job for passing bad parts. (Department's Exhibit 20).
2. WF/JET staff requested a triage meeting be set up with the department's staff and the claimant due to her being fired from her job. (Department's Exhibit 19).

3. On September 3, 2008 department mailed the claimant a Notice of Employment and/or Self-Sufficiency Related Noncompliance scheduling a triage appointment for September 10, 2008 to discuss any good cause reasons she may have for losing her job. (Department's Exhibit 17).

4. Department found claimant had no good cause for losing her job. (Department's Exhibit 15). Department also received a letter from claimant's employer [REDACTED] [REDACTED] dated September 11, 2008, saying that the claimant was terminated on August 29, 2008 for poor job performance. (Department's Exhibit 21).

5. As this was claimant's first instance of WF/JET noncompliance, she was offered a First Noncompliance Letter, DHS-754, allowing her to agree to certain activities to avoid losing her FIP benefits. This Letter states that the claimant is to start back at Work First on September 11, 2008 and complete 40 hours by September 17, 2008. Claimant signed the Letter agreeing to the stated requirements. (Department's Exhibit 14).

6. On September 19, 2008 WF/JET staff returned the DHS-754 to the claimant's caseworker with a note "failed test-only put in 25.25 hours". (Department's Exhibit 2).

7. Claimant's FIP case was previously pended for closure effective September 23, 2008, and such closure was to be deleted if she complied with DHS-754 requirements. As the claimant did not do so, her FIP case did close on September 23, 2008.

8. Claimant requested a hearing on October 14, 2008 saying she was having transportation problems.

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

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.

Refusing Suitable Employment

- . Refusing suitable employment means doing **any** of the following:
 - .. Voluntarily reducing hours or otherwise reducing earnings.
 - .. Quitting a job (see exception below).

Exception: This does NOT apply if:

- (a) The MWA verifies the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.
 - (b) A teen parent or dependent child quits a seasonal job to return to a high school or GED program.
- .. Firing for misconduct or absenteeism (not for incompetence).

Note: Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

- .. Refusing a bona fide offer of employment or additional hours up to 40 hours per week. A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent.

Exception: Meeting participation requirements is NOT good cause for refusing suitable employment, unless the employment would interfere with approved education and training.

Do NOT penalize applicants or member adds that refused employment more than 30 days prior to the date of application or date of member add. PEM 233A, pp.2-3.

In claimant's case she was found to be in noncompliance with employment-related activities due to being fired at the end of August, 2008. Claimant stated to WF/JET staff that she was fired from her job for "passing bad parts" (see Finding of Fact #1). It would appear that MW/JET staff interpreted this statement to mean that the claimant intentionally "passed bad parts", and therefore engaged in what could be called misconduct. However, subsequent letter from claimant's employer clearly states that she was fired for poor job performance (see Finding of Fact #4). Employer's statement as to why one's job ends is the information usually most credible to verify why the job ended. This Administrative Law Judge interprets claimant's statement that she was "passing bad parts" when coupled with employer's statement as to why the job ended to mean she was not competent in performing her job duties. Departmental policy quoted above clearly states that being fired for incompetence is not noncompliance with employment and/or self-sufficiency-related activities. Claimant should not have, therefore, been even scheduled for a triage, but referred back to WF/JET while she continued to be unemployed. Furthermore, claimant testified that she was subsequently approved for Unemployment Compensation Benefits from the employer that fired her. This also contributes to the conclusion that she did not commit some type of misconduct while on the job, or she may have not been eligible for such benefits.

The claimant should not have been found in noncompliance with WF/JET due to being fired from her job because of incompetence. Therefore, she should not have been scheduled for the triage, and would not have been given a DHS-754 with activities she did not comply with

that lead to the closure of her FIP case. Claimant's FIP case cannot be closed based on activities she was assigned in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly terminated claimant's FIP benefits in September, 2008.

Accordingly, department's action is REVERSED. Department shall:

1. Reinstatement claimant's FIP benefits retroactive to September 23, 2008 closure, if she meets other eligibility requirements (i.e. does not have excess income from receipt of UCB after this date).
2. If found eligible, issue the claimant any FIP benefits she did not receive as a result of this closure.
3. Not count erroneous WF/JET noncompliance determination of September, 2008 as claimant's first instance of such noncompliance, if such determination is needed in the future.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 30, 2008

Date Mailed: January 5, 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.

IR

[REDACTED]