

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

DHS Req. No: 2009-14168
SOAHR Docket No. 2009-27315 REHD



Claimant

_____ /

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 24.287(1) and 1993 AACS R 400.919 upon the request of the Department.

ISSUE

Did the Administrative Law Judge properly determine that Claimant had good cause for failure to attend JET and therefore the department erred in proposing to close Claimant's FIP case due to noncompliance?

FINDINGS OF FACTS

This Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On April 28, 2009, ALJ Michael Bennane issued a Hearing Decision in which the ALJ reversed the Department of Human Services' (DHS) proposed closure of Claimant's FIP due to noncompliance with JET requirements.
2. On May 29, 2009, the State Office of Administrative Hearings and Rules (SOAHR) for the Department of Human Services received a Request reconsideration submitted by DHS.
3. On July 29, 2009, SOAHR granted the Department's Request for Reconsideration and issued an Order for Reconsideration.
4. Findings of Fact 1 - 5 from the Hearing Decision, mailed on April 29, 2009, are hereby incorporated by reference.

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 (formerly 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).

The Family Independence Program (FIP) and Refugee Assistance Program (RAP) provide temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP and RAP engage in employment and self-sufficiency-related activities so they can become self-supporting. PEM Item 230

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain stable employment.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) through the [REDACTED]. The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency.

WEIs not referred to JET will participate in other activities to overcome barriers so they may eventually be referred to JET or other employment service. DHS must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP).

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency-related activities is subject to penalties. All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in other employment-related services. WEIs who are temporarily deferred are required to participate in activities that will assist in overcoming barriers and prepare them for employment or referral to an employment services provider. PEM Item 230. 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.

FIS should clear the FAST Fall Out Report and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST noncompletion.

Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).

FIS must have scheduled a FSSP completion appointment with the client and the client failed to attend before considering a client noncompliant for FSSP noncompletion.

Comply with activities assigned on the Family Self Sufficiency Plan (FSSP).

Provide legitimate documentation of work participation.

Appear for a scheduled appointment or meeting related to assigned activities.

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.

The penalty for noncompliance without good cause is FIP closure. 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.

Good cause includes the following:

The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in home care by the client.

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 requirements within the negative action period. PEM 233A

Under PAM manual item 600 the Department, AHR or, if none, the client may file a written request for rehearing/reconsideration. The client may request a rehearing/reconsideration when one of the following exists:

Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.

Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.

Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.

Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

A rehearing is a full hearing which is granted when:

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The original hearing record is inadequate for purposes of judicial review; or

There is newly discovered evidence that could affect the outcome of the original hearing decision.

A reconsideration is:

A paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties believes the ALJ failed to accurately address all the issues. PAM 600.

In the present case, I cannot find that the ALJ in this case failed to properly apply policy or law in making his decision. There was no error in the facts determined by the ALJ and he addressed all relevant issues raised. The Department argues that there is new evidence in the form of a sign in sheet to show that claimant did not attend JET. However, the ALJ based the decision on the fact that Claimant was not given proper notice of when she was to report for the JET appointment. Therefore, the documentation is irrelevant. The Department further argues in their request for reconsideration that “the hearing summary indicates that the client stated she did meet with her JET caseworker on Thursday, January 8, 2009. However, the client did not. It appears the ALJ took the Claimant’s word...”

Firstly, the fact the Claimant did or did not meet with the JET worker is once again irrelevant since the ALJ did not base the decision on the Claimant’s actions. Secondly, the Department indicated that this information was contained in the “hearing summary” which is a document written by the department and not the ALJ. Lastly, it is within the Administrative Law Judge’s purview and discretion to “take the word of the Claimant”.

The Administrative Procedures Act indicates that:

A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material and substantial evidence. MCL 24.285. Under Michigan Administrative Code R 400.917 A decision shall be based exclusively on the administrative law judge's opinion, evidence, and other material introduced at the hearing.

[REDACTED]
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The ALJ has the authority and discretion to weight evidence and assess credibility of witnesses when making a finding of fact. The ALJ made a proper determination based on all the relevant evidence presented. Therefore, there is no basis for a reconsideration.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Administrative Law Judge made a proper determination that claimant had good cause for failure to attend JET and that the department erred in proposing to close Claimant's JET.

IT IS THEREFORE ORDERED:

That the Department's request for reconsideration be and is hereby **DISMISSED**

/s/

Rhonda Craig
Administrative Law Judge
for Michigan Department of Human Services

cc:

[REDACTED]

Date Signed: November 30, 2009
Date Mailed: December 1, 2009

***** NOTICE *****

The Appellant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.