

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: 2009-32579  
Issue No: 1038  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
December 8, 2009  
Kent 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 December 8, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine the claimant's Family Independence Program (FIP) case should be closed for a third Work First/Jobs, Education and Training (WF/JET) program noncompliance in June, 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 a mandatory WF/JET participant. On May 21, 2009 the claimant signed a Probationary Status Form due to unexcused absences on May 11 and May 14, 2009 and not providing job searches for May 18 or May 20, 2009. The claimant was

told that any further unexcused absences, falsification of job leads, etc. would result in triage status. (Department Exhibit 13).

2. The claimant received a verbal warning regarding her attendance and job searches on June 4, 2009. The claimant gave documentation to WF/JET that she took her son to the Emergency Room on [REDACTED], but this did not excuse her the entire day and the claimant did not have proper documentation for her June 4, 2009 job searches. (Department Exhibit 12).

3. The claimant had two more unexcused absences on May 28 and June 8, 2009. Further, the claimant did not turn in job searches for June 4, 2009. (Department Exhibit 12).

4. A triage appointment was requested by WF/JET staff on June 9, 2009. (Department Exhibit 1, 12).

5. The claimant was mailed a Notice of Noncompliance (DHS-2444) on June 9, 2009, scheduling the triage appointment for June 22, 2009. (Department Exhibit 2 – 3).

6. On June 11, 2009, the claimant called the department and left a message indicating she no longer wanted to receive her cash assistance. (Department Exhibit 4).

7. The claimant was a no call/no show for the triage appointment. (Department Exhibit 5).

8. The claimant was mailed a Notice of Case Action (DHS-1605) on July 13, 2009, that indicated her FIP benefits were closing. (Department Exhibit 6 – 9).

#### 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

See BEM 233B for the Food Assistance Program (FAP) policy when the FIP penalty is closure. For the Refugee Assistance Program (RAP) penalty policy, see BEM 233C. BEM 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 related to assigned activities.
  - .. Provide legitimate documentation of work participation.
  - .. 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. BEM 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 in Bridges and the FSSP under the “Participation and Compliance” tab.

See “School Attendance” BEM 201 for good cause when minor parents do not attend school.

### **Employed 40 Hours**

#### **Client Unfit**

#### **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. BEM 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. BEM 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. BEM 233A, pp.4-5.

### **EFIP**

EFIP unless noncompliance is job quit, firing or voluntarily reducing hours of employment.

### **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. BEM 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. BEM 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, providing legitimate documentation of work participation, etc. BEM 233A. In this case, the claimant does not dispute that she was noncompliant with WF/JET program requirements. The claimant admits that she was placed on probationary status due to unexcused absences and that she had absences after she was placed on the probationary status. WF/JET documentation establishes that the claimant had absences on May 8; May 11; May 14; May 28 and June 8, 2009. WF/JET documentation also establishes that the claimant did not submit appropriate job searches on May 18; May 20; and June 4, 2009.

The claimant indicates that she believes she had good cause for her noncompliance. Good cause is defined as 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. BEM 233A. In this case, the claimant testified that she had a number of medical problems and appointments that caused her to be absent from WF/JET.

The claimant provides this Administrative Law Judge with 22 pages of medical documentation faxed from [REDACTED]. The documentation indicates that the claimant was seen in the emergency room on [REDACTED] and [REDACTED]; the claimant's

child was seen in the emergency room on June 8, 2009 and November 12, 2009. (See Claimant's Exhibits 28 – 48)

However, these emergency room visits do not correspond with each WF/JET absence or missed assignments. The only date the claimant was in the emergency room and missed participation with WF/JET was on June 8, 2009. The claimant has no medical documentation excusing her from attendance on May 8; May 11; May 14; and May 28, 2009. The claimant also has no medical documentation providing any reason for her failure to provide job searches on May 18; May 20 and June 4, 2009.

It is noted that the claimant did not attend the triage appointment. The claimant testified that she didn't think she had to attend the triage appointment. However, as clearly indicated on the Notice of Noncompliance that was mailed to the claimant, the triage was her opportunity to provide any good cause reasons and documentation to the department. The claimant failed to present any good cause reasons to the department prior to the negative action date.

Even the documentation the claimant has now presented to this Administrative Law Judge does not provide good cause for her absences and failure to turn in job searches. The claimant is found to be noncompliant without good cause.

There was some question during the hearing of how many instances of noncompliance the claimant has had. The department claimed the client had three instances of noncompliance and the claimant indicated she only had two previous instances of noncompliance. The department faxed the entire WF/JET case notes to this Administrative Law Judge. These notes do show that the claimant was given good cause for one instance of noncompliance. Thus, this is the claimant's second instance of noncompliance since April, 2007.

It is noted that the claimant requested her FIP benefits to be closed on June 11, 2009. However, the claimant was not eligible to have her FIP closed because she was already in the noncompliance/triage process. Department policy indicates that if the Notice of Noncompliance has been issued to a noncompliant person prior to their verbal or written request for case closure, the noncompliance determination must proceed. BEM 233A. Thus, the department properly continued with the noncompliance determination in this case, as the claimant did not request her case to be closed until two days after the Notice of Noncompliance had been mailed.

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 without good cause and properly determined her FIP case should be terminated, but improperly determined that this was her third instance of noncompliance.

Accordingly, the department's actions are AFFIRMED IN PART and REVERSED IN PART.

The claimant is held to be noncompliant without good cause. However, the claimant is not to be sanctioned for 12 months, but for three months as this is the claimant's second instance of noncompliance.

SO ORDERED.

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

Date Signed: February 25, 2010

Date Mailed: March 2, 2010

**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 [REDACTED]

cc: [REDACTED]