

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: 2009-32883  
Issue No: 1038  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 23, 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 September 23, 2009. The claimant personally appeared and provided testimony, represented by her attorney, [REDACTED]. The record was left open until October 7, 2009 to allow the department to submit further information.

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 July, 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 applied for FIP benefits and signed the Work and/or Self-

Sufficiency Rules for Cash Recipients (DHS-1538) on September 15, 2008.

(Department Exhibit 2).

2. The department scheduled a triage appointment for the claimant on June 29, 2009, alleging she had been noncompliant in her participation with her community service placement, [REDACTED]. (Department Exhibit 3 – 4).

3. The claimant did attend the triage appointment. The department indicated that the claimant had attendance and attitude problems. The claimant indicated that the department had her confused with someone else that was working at that placement. The department granted the claimant no good cause for her noncompliance and closed her case.

(Department Exhibit 1, 10, 15).

4. The claimant submitted a hearing request on July 13, 2009.

#### 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 disputes that she was noncompliant with WF/JET program requirements.

The department claims that the claimant was terminated from WF/JET due to attendance and attitude problems at her community service placement, [REDACTED]. The department presented four attendance sheets with comments from supervisors to support their case. The first comment is from a previous class that the claimant took, and not related to the [REDACTED] placement (see Department Exhibit 5). The remaining three attendance sheets relate to the claimant's time at [REDACTED], which is the alleged noncompliance. The first is dated May 16, 2009 and signed by the supervisor Amanda Cervantes. This sheet shows the claimant's attendance and indicates that the claimant forgot to call and let her supervisor know about the job fair until later in the day, that the claimant was ten minutes late on Friday, but that the claimant is a good worker (see Department Exhibit 6). The next sheet shows the claimant's attendance and has no comments on it (see Department Exhibit 7). The last sheet shows the claimant's attendance hours and indicates that the claimant needs to stay busy at all times unless on a break and that she needs to have a more positive attitude (see Department Exhibit 8). These are the only pieces of documentation from [REDACTED]

The department WF/JET case notes indicate that the site supervisor from [REDACTED] Amanda Cervantes, had made complaints about the claimant having a poor attitude, being on the telephone too much and being in the restroom too often. However, there is no documentation from Ms. Cervantes other than that previously discussed.

Further, Ms. Cervantes authored a letter regarding the claimant for the purpose of the hearing. Ms. Cervantes wrote that there was a misunderstanding about the claimant on her volunteer site. Ms. Cervantes indicates that she made two complaints about the claimant's work for taking long breaks and taking breaks when she was not supposed to. Ms. Cervantes goes on to state that after she talked to the claimant about these issues, they were resolved.

Ms. Cervantes also points out that the claimant was not terminated due to any attitude problem, but because the JET program didn't have the funds to continue the JET Plus program (see Claimant Exhibit 16).

The department counters this letter with one authored on September 4, 2009, by Ms. Cervantes when the department contacted her after receiving the letter the claimant submitted. This letter indicates that Ms. Cervantes misunderstood why the claimant's work was terminated at the work site. Ms. Cervantes now indicates that she complained about the claimant's behavior and that was why the claimant was terminated. Ms. Cervantes indicates that she misunderstood why the claimant was terminated because right after she made the complaint, all the participants were no longer placed with her, so she thought it had something to do with funding.

This Administrative Law Judge held the record open to attempt to get some clarifying information from the site supervisor and the department. This Administrative Law Judge requested the department provide a further statement from Ms. Cervantes to indicate why she submitted conflicting statements and provide any further documentation she made of the complaints against the claimant. This Administrative Law Judge also requested to know what happened to the other participants who were working at the [REDACTED] site.

The department provided no further statement from the site supervisor, Ms. Cervantes. The department indicated that there are no current participants placed with [REDACTED] and because the JET Plus program wasn't accepting any more participants, no one was going to be placed there in the future (see Department Exhibit 21). The department's statement submitted indicated that they have no contact with Ms. Cervantes and wouldn't be getting any statement

from her. This seems a bit puzzling, as the department certainly had Ms. Cervantes contact information. Why the department could not obtain a statement from Ms. Cervantes is unknown.

The department's statement submitted concerning the other participants indicates that they were "asked not to return due to attendance concerns". The department also points out that there were more than two other people assigned to [REDACTED]. It certainly does seem strange that all of the participants at [REDACTED] were all of a sudden "asked not to return." This would seem to support that there may have been a funding issue as explained by Ms. Cervantes in the letter she authored for the claimant.

The department also attempts to explain the conflicting letters from Ms. Cervantes (although not by providing any statement from Ms. Cervantes). The department provides a statement that indicates "it can only be assumed that Beth consistently asked [Ms. Cervantes] to" (write the letter) "and [Ms. Cervantes] may have either felt threatened or just wanted to be out of the situation completely..." (see Department Exhibit 24).

However, the department's assumptions are not evidence in this hearing. The relevant evidence that could have been provided by the department was a statement from Ms. Cervantes indicating that this was the case. It is noted that this would mean that a WF/JET contractor was providing false information which could be either a benefit or detriment to clients. Were the department's assumptions true, this is unprofessional conduct, at the very least.

Therefore, this Administrative Law Judge does not find that the department has established the claimant was noncompliant. Although the department indicates the claimant had attendance issues, no dates are provided showing the claimant was absent. The department points out that the claimant had attitude problems and had received some complaints about her work. However, only two documents from [REDACTED] provide any complaints and one

indicates the claimant is a good worker. There is no evidence presented that the claimant did not complete her assignments or participate as required. Thus, the department has not met their burden of proof to show the claimant was noncompliant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined the claimant was noncompliant with WF/JET program requirements without good cause and improperly determined her FIP case should be terminated.

Accordingly, the department's actions are REVERSED. The department shall:

1. Reinstatement of the claimant's FIP case and issue her any retroactive benefits to the date of case closure that she is eligible for.
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: December 15, 2009

Date Mailed: December 21, 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 [REDACTED]

cc:

[REDACTED]