

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: 2009-5613

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

St. Clair 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 three-way telephone hearing was held on March 25, 2009. Claimant personally appeared and testified from his home.

ISSUE

Did the department correctly take action to terminate claimant's Family Independence Program (FIP) benefits in November, 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 recipient of FIP benefits and a mandatory Work First/Jobs, Education and Training (WF/JET) participant when he was assigned to attend [REDACTED] [REDACTED] on October 6, 2008 (Department's Exhibit #1).

2. Claimant started [REDACTED] site on October 13, 2008. On October 14, 2008, claimant did not attend the site and lost 6 hours of attendance.

3. On October 15, 2008, claimant called and stated he would not be at the site today due to a problem with his medication making him sleepy. Claimant received 6 hours of absence time, making October total 12 hours.

4. On October 20, 2008, claimant left the site early and lost 5 hours, for October total of lost hours 17. WF/JET staff then held a triage on October 30, 2008. Claimant stated he is on several medications and this caused him to be ill and miss WF/JET. Claimant had an upcoming appointment with a doctor to have the Medical Needs form (DHS-54A) completed, and was deferred for a week to obtain the DHS-54A (Department's Exhibit #2).

5. On November 6, 2008, department received the DHS-54A stating that the claimant was last seen on October 28, 2008, that he cannot work at his usual occupation, but that he can work with limitations, citing phone clerk as a job claimant could do (Department's Exhibit #6).

6. Department had previously mailed the claimant a First Noncompliance Letter following a triage on October 30, 2008, that stated he must report to WF on November 10, 2008, if not deferred (Department's Exhibits #4, 5 and 8).

7. Claimant did not attend WF on November 10, 2008, and department took action to terminate his FIP benefits effective November 25, 2008. Claimant requested a hearing on November 19, 2008, and continues to receive FIP benefits pending the outcome of this hearing.

8. Claimant provided a second DHS-54A on November 25, 2008, from the same doctor that completed such a form received by the department on November 6, 2008. This form went into more details about claimant's ability to work and stated that he can work on light duty, partial sit, partial stand, phone clerk (Department's Exhibit #7).

9. This form asked specifically if the claimant can attend a job training program with a response of yes, and whether he can attend a rehabilitation program to help him retain a job with his disability with a response of yes.

10. Claimant testified at the hearing that the doctor that completed two DHS-54A's was wrong, and that he had allegedly provided another DHS-54A from another doctor to the department sometimes at the end of October or beginning of November, 2008.

11. Following the hearing this third DHS-54A was faxed to the Administrative Law Judge for review. This form states that the doctor who completed it saw the claimant last on July 7, 2008, that the claimant can work at other jobs with limitations but cannot walk, stand, push or pull in a job, and that he cannot be in a job training program, specifically "MI Works 10/10/08 per pt".

12. Department's testimony is that the claimant did not provide this DHS-54A previously, even though the claimant states that he did and as proof claims "DHS Only" stamp that is on the document shows he made a copy of it in the DHS office.

13. Department's comment with the DHS-54A is that the form is not date stamped, and when customers make copies they are told by the front desk to put the items in one of the two "drop" boxes. The items from the drop box are retrieved twice per day and date stamped by the mail clerks and then put into the mailbox of the Specialist.

CONCLUSIONS OF LAWThe 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.

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.

Good cause includes the following:

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.

Claimant states that he is not able to participate with WF/JET due to medical problems. Departmental policy does provide for a deferral from WF/JET participation in certain circumstances, as it states:

Deferral for Disability

Defer the following:

- . Recipients of RSDI based on disability or blindness.
- . Persons found eligible for RSDI based on disability or blindness who are in non-pay status. PEM 230A, pp. 11-12.

Deferral for Short-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity which is expected to last less than three months and which prevents participation. Defer for up to three months.

Verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs form, or other written statement from an M.D. or D.O.

If a non-pregnancy-related condition lasts or is expected to last more than 3 months, follow deferral policy for long-term incapacity below.

Deferral for Long-Term Incapacity

Defer persons with a mental or physical illness, limitation, or incapacity expected to last more than three months and preventing their participation in employment-related activities.

When a client states they are disabled or indicates that he/she may be unable to participate in work or JET (including those who have applied for RSDI/SSI) because of a mental or physical condition, injury, illness, impairment, or problem at intake, review or anytime during an ongoing benefit period, require the client to provide verification from their doctor (a DHS-49 or DHS-54A may be used). PEM 230A, pp. 12-13.

Department reviewed two DHS-54A's from a doctor that saw the claimant on

██████████ The first form was used in department's determination that the claimant was capable of doing some jobs with limitations, and the second form also states the same. These two forms state that the claimant is ambulatory, does not need special transportation, does not need assistance with any of the personal care activities, but cannot work at his usual occupation, and can work with limitations at other jobs. The second form from the same doctor specifically states that the claimant can be on light duty jobs with partial sitting, partial standing, as a phone clerk, and that he can attend a job training programs and a rehabilitation program. As the claimant's doctor did not indicate that he is unable to do any type of job, department correctly acted in requiring the claimant to report to the JET program.

Claimant testified that the doctor that completed these two DHS-54A's is wrong and that another doctor has a better understanding of his medical issues. It was pointed out to the claimant that he is the one that provided DHS-54A's to this doctor, his own doctor, as he apparently felt he would complete them accurately. Therefore, it cannot be said that the department obtained claimant's medical information from a doctor they chose.

Claimant also testified that he had submitted a third DHS-54A to the department from this other doctor sometimes at the beginning of November, 2008, but that his caseworker had misplaced it. Department's representative indicates that the department did not receive this DHS-54A as of the date of the hearing. This Administrative Law Judge has reviewed the DHS-54A that the claimant stated was not taken into account by the department. This form

states that the claimant needs assistance with mobility, taking medications, meal preparation, shopping, laundry and housework. As this doctor has not even seen the claimant since July 7, 2008, it seems peculiar that the form would be in such drastic contradiction with the DHS-54A completed by a doctor that saw the claimant on [REDACTED] and stated that he does not need assistance with any of his personal care activities. It is also noted that the claimant has physical custody of two children ages 3 and 8, and that the mother of the children does not live with the claimant and is receiving disability. If the claimant indeed needs such extensive help with his own personal care activities and the mother of the children is also disabled, one must question how the claimant manages to take care of the two small children that need just about all of the personal care activity assistance. However, even setting such questions aside, even the DHS-54A from July 7, 2008, doctor's visit indicates that the claimant can work at other jobs with limitations of no walking, standing, pushing or pulling.

Furthermore, claimant also provided during the hearing a second DHS-54A completed by the doctor that saw him on [REDACTED] and then again on [REDACTED]. This DHS-54A states that the claimant can work at other jobs with limitations of standing, lifting, pushing, pulling, and walking, but then a contradicting statement that the claimant cannot attend a job training program or a rehabilitation program at this time is on the form.

In conclusion, this Administrative Law Judge does not doubt that the claimant has valid health issues that do restrict his ability to participate in employment-related activities. However, departmental policy does require that medical information be obtained for any client that wants to be deferred from employment-related activities. Department did so in claimant's case and received information from claimant's own doctors that he could participate in some type of a job with limitations. This left the department no choice but to refer the claimant to WF/JET for evaluation and possible placement in some type of employment-related activities that would fit

his medical limitations. When the claimant failed to participate with WF/JET, department was required to take action to terminate his FIP benefits. If the claimant is to provide additional medical information in the future that indicates he is unable to engage in any type of employment-related activities, his WF/JET deferral can be explored further and in accordance with applicable departmental policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly took action to terminate claimant's FIP benefits in November, 2008.

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

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

Date Signed: _____

Date Mailed: _____

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]

cc:

[REDACTED]