

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: 2009-6406

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

Wayne 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 March 25, 2009. Claimant personally appeared and testified.

ISSUE

Did the department correctly terminate claimant's Family Independence Program (FIP) benefits in December, 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 and signed a Work and/or Self-Sufficiency Rules for Cash Benefits form on October 10, 2008 (Department's Exhibit #6).

2. By signing this form claimant acknowledged that she understood JET program requirements, what she had to do to meet these requirements, what the penalties were for not meeting the requirements, and what good reasons for not cooperating with JET may include.

3. Claimant was given a WF/JET Appointment Notice telling her she must report to a WF/JET site on October 23, 2008 (Department's Exhibit #5).

4. Claimant attended WF/JET orientation on October 23, 2008, and was scheduled to begin job search on October 27, 2008. On November 14, 2008, WF/JET staff determined that claimant had poor attendance and referred her for a triage (Department's Exhibit #4).

5. On November 18, 2008, department mailed the claimant a Notice of Noncompliance telling her she had poor attendance for WF/JET and scheduling a triage meeting for December 4, 2008, to discuss her reasons for this noncompliance (Department's Exhibit #2).

6. Claimant attended the triage meeting and stated she was still unable to attend WF/JET because her son continues to have behavioral issues at school. Claimant stated her son was in the special education program at the school, she attends school with him every day or stays at home with him during temporary suspensions (Department's Exhibit #1).

7. Claimant provided records from [REDACTED] for her son from September 8, 2008 to December 3, 2008. These records show that claimant's son has attended school every single day in this time period, but would miss occasional classes in between the ones he attended during the day (Department's Exhibit #7).

8. As the school documentation did not show that claimant's son was totally absent from school on any given day, department determined that the claimant did not have good cause for WF/JET noncompliance.

9. Claimant requested a hearing on December 4, 2008. Claimant's FIP benefits terminated on December 9, 2008.

10. Claimant introduced additional school documentation at the hearing that was provided to the Administrative Law Judge. This documentation consists of a Student Progress Reports from October 6 and October 13, 2008, showing that claimant's son is disruptive in classes, does not complete his work, is argumentative, refuses to finish tests, and has too many absences in some of his classes.

11. Claimant also provided a Notice of Meeting for December 9, 2008, from the school in regards to her son for behavior review, and information about her son's school achievements and behavior.

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.

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 “trriage” 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. PEM 233A, p. 7.

That the claimant was a mandatory WF/JET participant is not in dispute. Claimant also does not dispute WF/JET staff's determination that she had too many absences from this program. Departmental staff testified that according to WF/JET notes claimant has no GED or high school diploma, there are warrants out for her arrests (claimant disputes this), she is allegedly on probation, she did not want to submit to drug tests, and that she owes ██████ in fines and thousands of dollars in child support.

Claimant testified that her 16 year-old son is in special education classes, that he has had a lot of emotional problems, that his grandmother died and he subsequently tried to commit suicide on January 29, 2009. Claimant also testified that she is a single mother of two children,

she wants her children to succeed, her son is disabled and she had to rush him to the hospital. Claimant stated she has been at the school with her son to make sure he attends, however when asked specifically how many times per week she did go to her son's school during the period of her WF/JET noncompliance, claimant states about once per week. School records for the claimant's son show that he attended school every day but would not report for some classes during the day. If the claimant indeed attended school every day with her son from September 8, 2008 to December 3, 2008 as she stated at the triage, it seems peculiar that she would not make sure he is present at all of his classes. Therefore, claimant's statements that she was at the school with her son frequently are not found to be credible. In addition, claimant was called to a school meeting but this was for December 9, 2008, after her period of noncompliance (see Statement of Fact #11), and is irrelevant for the issue in this hearing.

Claimant was also asked why she would not want to obtain a GED, something that would be helpful to her and certainly a good example for her children since she testified she wants her children to succeed. Claimant responds that she already has a cooking certificate and does not need the GED.

Claimant also passionately testified about her son's mental and emotional issues and how she is getting him help for such issues, and this is another reason for her not being able to comply with WF/JET requirements. Further testimony however revealed that the claimant did not take her son for any psychological assistance until he attempted to hurt himself at the end of January, 2009. Claimant has had Medicaid for herself and her son while she was receiving FIP benefits, and could have obtained medical help prior to the end of January, 2009, as she apparently felt her son's issues were serious enough to keep her from complying with WF/JET and possibly risking losing her FIP grant. Illness of a family member when verified by a doctor

can possibly be considered good cause for WF/JET noncompliance. In the absence of such medical evidence, good cause cannot be granted.

In conclusion, it may be likely that claimant has issues that prevented her from WF/JET participation. Such issues may be legal, personal, or the claimant simply thinks that WF/JET is a waste of her time as she stated she can get a job with her cooking certificate and does not need a GED. However, the reasons claimant voiced to the department and during this hearing as an excuse for lack of such participation are not sufficient under departmental policy to rise to the level of good cause for WF/JET noncooperation.

DECISION AND ORDER

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

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

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

Date Signed: March 30, 2009

Date Mailed: April 2, 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]

cc:

[REDACTED]