

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: 2009-6798

Issue No: 1038; 3029

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2009

Clare County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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, an in-person evidentiary hearing was held on March 18, 2009.

ISSUE

Did the Department of Human Services (DHS) properly propose to sanction claimant's FIP and FAP cases on the grounds that claimant failed to comply with the DHS work requirements without good cause?

FINDINGS OF FACT

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

(1) At all relevant times herein, claimant and claimant's spouse as well as their family have been beneficiaries of the welfare programs under the FIP and FAP programs. Exhibits 3 and 4.

(2) Both claimant and claimant's spouse are mandatory participants in the Work First program.

(3) On 12/4/08, the caseworker was notified by the Michigan Works association (MWA) that claimants were not participating as required. A triage was requested.

(4) On 12/11/08, a triage was held. Both individuals claimed they were disabled and unable to work.

(5) The department gave claimants a DHS-49 and 54A to provide medical documentation to support the claim of a good cause disabling condition(s).

(6) No medical documentation was received on behalf of claimant wife.

(7) The department had a DHS-54A for claimant husband which states that claimant can work at any job with limitations: patient unable to do a job that requires a lot of lifting. Claimant has no needs with activities of daily living and is ambulatory. Exhibit 1.

(8) Claimant husband delivered a DHS-49, dated 9/30/08, stating that out of an 8-hour workday claimant can stand and/or walk at least 2 hours and can sit about 8 hours out of an 8-hour workday. Claimant has no restrictions with regards to hands/arms and feet/legs. Claimant can meet his needs in the home.

(9) The department determined at the 12/11/08 triage that the medical documentation for claimant spouse did not substantiate a claim of a disabling impairment as defined under policy. Good cause was not given.

(10) The department determined that there was no medical evidence received on behalf of claimant wife and thus, no good cause.

(11) On 12/4/08, the DHS issued two notices for FIP and FAP containing the sanctions for failure to comply with Work First.

(12) On 12/4/08, the department issued a notices of noncompliance for failure to participate with MWA as required.

(13) On 12/8/08, claimant filed a timely hearing request. The department reinstated the action pending the outcome of the hearing. Claimants continued to receive full benefits.

(14) On 1/8/2009, SOAHR scheduled a January 22, 2009 telephone hearing. Claimants requested an in-person hearing and benefits continued. On 3/8/09, the in-person hearing was held. Claimant continues to receive benefits.

(15) At the administrative hearing claimant had a statement dated 3/6/09, Claimant Exhibit A, admitted into the record but this statement was ruled irrelevant as to the action herein.

(16) Claimant submitted an occupational therapy statements, dated 10/28/08. The department had a copy of this statement.

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).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Relevant policy to the case herein states in part:

DEPARTMENT PHILOSOPHY

FIP, RAP Cash

Clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by DHS when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments will be covered by the JET case manager when a mandatory JET participant is referred at application. PEM 229, p. 1.

DEPARTMENT PHILOSOPHY

FIP, RAP Cash

Department of Human Services (DHS) assists families in becoming self-supportive. By involving the adult members of the household in employment and/or self-sufficiency-related activities leading to self sufficiency, we help restore self-confidence and a sense of self-worth. PEM 230A, p. 1.

DEPARTMENT POLICY

FIP, RAP Cash

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds **not** in high school full-time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless 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 to find employment. Apply FIP policy to RAP cash clients unless a separate RAP cash policy is mentioned.

JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG), Michigan Works System.

The individual sites where clients report are the Michigan Works! Agency's (MWA's). The JET program serves employers and job seekers to ensure that employers have skilled workers and workers have good jobs that provide economic self-sufficiency.

A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1.

REASONABLE ACCOMMODATION

Disability Definition

Section 504 and the ADA define a disability as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities under Section 504 of the Rehabilitation Act of 1973, (Section 504), the Americans with Disabilities Act of 1990, and Michigan Persons with Disabilities Civil Rights Act. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to policies and requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency.

When a client requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements. If needed, a plan for reasonable accommodation is documented and justified in the client's Family Self-Sufficiency Plan (FSSP) and the individual Service Strategy (ISS with the MWA).

Clients who claim disability must be advised that they may be required to engage in self-sufficiency and family strengthening activities even if they are deferred from JET or work activities and may be subject to penalties if they do not participate as required.

The existence of a disability must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future.

Screening and Assessment

Be alert to undisclosed or unrecognized disabilities and offer screening and assessment as appropriate. Help clients understand that DHS can only offer accommodations if a disability is verified. Clients are screened for disabilities on the DHS-619, Jobs and Self-Sufficiency Survey and the FAST, which ask questions about medical problems, special education and symptoms of mental illness.

Inform clients requesting accommodation or deferral that they may be required to attend appointments with MRS, doctors, psychologists, or others to ensure that appropriate accommodations or deferrals are made. Explain that assessment is voluntary but failure to cooperate with assessment may prevent DHS from providing a deferral or accommodation. PEM 230A, pp. 2-3.

Accommodation

If a person has a disability that affects his or her ability to comply with program rules or requirements, those rules or requirements may be modified, or extra help may be provided. Individuals must not be assigned to activities that they are unable to do because of their disability or the disability of a spouse or child in their household.

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours they are engaged even if they do not meet federal work requirements. PEM 230A, p. 3.

Deferral for Short-Term Incapacity

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.

VERIFICATION REQUIREMENTS

- . **Disability.** If the client claims a disabling condition expected to last more than 90 days, it must be verified:
 - .. Note from client's doctor
 - .. DHS-49
 - .. DHS-54A

In this case, the department is required under its policy to issue a DHS-54A and DHS-49 in instances where an individual claims disability as good cause for failure to participate with Work First. As noted in the Findings of Fact, claimant had these forms.

Policy requires these forms to be used for a claimed disability. Thus, the narrative statements and other forms which claimant attempted to submit were irrelevant to the extent that they were composed some time after the action herein and thus, did not relate back to what this Administrative Law Judge must do--review the record to see if the department acted correctly at the time it made its determination. With regards to another medical form in existence at the time, the medical form refers to claimant husband, and is an occupational therapy form. However, the department is not in a position to interpret the findings in these forms but rather rely on the verifications required by policy--the 54A and the 49.

Policy under PEM Item 230A indicates that where there is a claim of disability and the medical documentation indicates an illness, limitation, or incapacity that is expected to last more than 90 days, which would prevent participation in employment-related activities, the department is to send the medical documentation over to MRS. This is somewhat discretionary.

After a careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that the department acted correctly under its policy and procedure. As noted already, the issuance to MRS of the medical documentation is somewhat discretionary. The department did not unreasonably interpret the information found on the 54A

and/or the 49 to indicate that claimant could not work with restrictions. See Exhibits 1 and 2.2.

This ALJ will not supersede the department's interpretation.

With regards to claimant wife, unrefuted evidence on the record is that no medical documentation was returned as required under policy.

This ALJ finds that the department correctly followed its policy and procedure in proposing to sanction claimant's FIP and FAP cases on the grounds that claimant wife and claimant husband failed to participate in the mandatory work requirements without good cause. The department's proposed sanction is upheld.

As noted, claimant had other medical documentation which was compiled months after the proposed negative action herein. This Administrative Law Judge makes no ruling with regards to those documents.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed sanctions were correct.

Accordingly, the department's proposed sanction of claimant's FIP and FAP cases for failure to comply with mandatory work requirements is hereby UPHELD.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 30, 2009

Date Mailed: April 1, 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 mailing date of the rehearing decision.

JGS/cv

cc:

