

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: 2009-726
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 1, 2010
Ionia 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 April 1, 2010. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine the claimant's Family Independence Program (FIP) case should be penalized for one month due to a job quit in September, 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. On August 13, 2008, the claimant applied for FIP benefits. (Department Exhibit 1 – 16).
2. On September 4, 2008, the department determined that the claimant did not have good cause for her job quit on August 5, 2008. The claimant reported that she had quit her job

because she had a contract to work 40 hours per week and the employer cut her hours to 20 hours per week. (Department Exhibit 19).

3. The department determined that the claimant would be sanctioned from FIP participation for 30 days, making her eligible to receive FIP benefits beginning September 16, 2008. (Department Exhibit 20).

4. On September 8, 2008, the claimant provided a copy of her letter of resignation letter and reasons for quitting her employment. (Department Exhibit 22 – 27).

5. The claimant submitted a hearing request on September 17, 2008.

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).

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 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:

Refusing Suitable Employment

- . Refusing suitable employment means doing **any** of the following:
 - .. Voluntarily reducing hours or otherwise reducing earnings.
 - .. Quitting a job (see exception below).

Exception: This does NOT apply if:

- (a) The MWA verifies the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.

(b) A teen parent or dependent child quits a seasonal job to return to a high school or GED program.

- .. Firing for misconduct or absenteeism (not for incompetence).

Note: Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

- .. Refusing a bona fide offer of employment or additional hours up to 40 hours per week. A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent.

Exception: Meeting participation requirements is NOT good cause for refusing suitable employment, unless the employment would interfere with approved education and training.

Do NOT penalize applicants or member adds that refused employment more than 30 days prior to the date of application or date of member add. PEM 233A, pp.2-3.

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.

Employed 40 Hours

Client Unit

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. PEM 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. PEM 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. PEM 233A, pp.4-5.

NONCOMPLIANCE PENALTIES AT APPLICATION

Noncompliance by a WEI while the application is pending results in **group** ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application **or** while the application is pending must have benefits delayed. See “**Benefit Delay for Refusing Employment**” below.

Benefit Delay for Refusing Employment

If a WEI applicant refuses suitable employment without good cause while the FIP application is pending (**or up to 30 days before the FIP application date**), approve FIP benefits no earlier than the pay period **following** the pay period containing the 30th day after the refusal of employment. Record the good cause determination on the DHS-71, Good Cause Determination.

If a WEI member add refuses suitable employment without good cause while the FIP member add is pending, close the FIP for the minimum number of penalty months. PEM 233A, p. 5.

Noncompliance is defined by department policy. PEM 233A. One of the forms of noncompliance is “refusing suitable employment.” According to department policy this would include quitting a job. PEM 233A.

The claimant did quit her job with [REDACTED] on August 5, 2008. The department determined that the claimant did not have good cause to quit her employment and imposed a benefit delay. PEM 233A. The department determined that the claimant would be eligible to

receive FIP benefits beginning September 16, 2008 (the pay period after the 30 days after the job quit). PEM 233A.

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. PEM 233A. The claimant testified that she quit her job because she was being harassed and discriminated against, as the employer had broken the contract to employ her for 40 hours per week as a manager and eventually demoted her without any disciplinary action. The claimant points out that the Unemployment Insurance Agency (UIA) found that she did quit her job for good cause attributable to the employer. (See Claimant's Exhibit 31 and 32).

While the UIA findings are not binding on this Administrative Law Judge, they do lend credence to the claimant's discrimination claims. The claimant testified credibly that she suffered discrimination at her place of employment, which caused a reduction in her hours and demotion. This is supported by the finding that the UIA made in determining the claimant left her employment with good cause attributable to the employer.

The department contends that the claimant didn't submit the information until after the good cause determination was made, so they could not change the benefit delay. However, this Administrative Law Judge can find nothing in department policy requiring the claimant to submit documentation of her good cause at application.

In fact, the Eligibility Notice (DHS-4400) that was mailed to the claimant on September 4, 2008, informed her that she was "not eligible for cash until the 2nd half of Sept. due to not finding good cause on your job quit. Never rec. DHS-38 back from [REDACTED] and we need to determine good cause for job quit/fire if it was within the last 30 days from application." (See

Department Exhibit 20) However, the claimant should not be penalized because [REDACTED] refused to provide a Verification of Employment. It is highly unlikely an employer is going to admit to discrimination in any document, therefore, it is unclear how verification of any good cause would be found in documents from [REDACTED]. Further, even though the claimant indicated she believed she had good cause for her job quit from the beginning (at the application interview on August 13, 2008), no further verification or documentation was requested from the claimant.

The claimant did provide further explanation on September 8, 2008. The department could have made a further determination at that time, but did not. This Administrative Law Judge finds that the claimant did provide persuasive evidence of discrimination to the department and should have been found to have good cause for her job quit. Therefore, the department should not have sanctioned the claimant with a FIP benefit delay.

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 did not have good cause for quitting her job and improperly sanctioned the claimant with a FIP benefit delay.

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

1. Open the claimant's FIP benefits as of the date of application, August 14, 2008.
2. Issue the claimant any retroactive FIP benefits that she is entitled to receive.

SO ORDERED.

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

2009-726/SLK

Date Signed: April 16, 2010

Date Mailed: May 3, 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 

cc:

