

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: 2009-8216

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

Saginaw 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 March 25, 2009. The claimant personally appeared and testified, along with her attorney Terry Winegarden.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits due to noncompliance with Work First/Jobs, Education and Training (WF/JET) participation requirements 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. The claimant was a FIP recipient when the Medical Review Team (MRT) determined she was not disabled, but work ready with limitations. The claimant had no physical

limitations and her mental limitation was that she was limited to unskilled work (Department Exhibit #1).

2. The claimant attended WF/JET orientation on November 3, 2008. The rules of the program were explained to the claimant at that time (Department Exhibit #2).

3. The claimant was to attend the job search site on November 4, 2008 (Department Exhibit #2).

4. The claimant did not attend WF/JET at all on November 4, 2008 (Department Exhibit #2).

5. The claimant was mailed a Notice of Noncompliance (DHS-2444) on November 21, 2008, scheduling a triage appointment on December 2, 2008, to address the alleged noncompliance (Department Exhibit #3).

6. The claimant did not attend the triage appointment or make arrangements to conduct it another day or by telephone. No good cause was granted and the claimant's case closed on December 2, 2008 (Hearing Summary).

7. The claimant went into the local DHS office on December 3, 2008, and indicated she had forgotten the day of the triage due to a medical condition. Her case was already closed at that time (Hearing Summary).

8. The claimant turned in a hearing request on December 10, 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:

- . 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.

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 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. PEM 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. PEM 233A, pp. 10-11.

The claimant attended the WF/JET orientation on November 3, 2008. The claimant testified that the staff did go through the rules and requirements of the program with her at that time. The claimant was required to attend the job search site on November 4, 2008.

Both the department and the claimant indicate that there was a telephone contact from the claimant to the WF/JET worker on November 4, 2008. However, the exact circumstances of this telephone call are disputed. The case notes made by the department worker at or about the time of the telephone call, indicate that “client called 11/4/08, stating she has a psychiatrist

appointment this morning. She stated she could come and sign in, but would leave for her doctor's appointment." (Department Exhibit #2). The claimant testified that she called and spoke with the caseworker and informed her that she had a psychiatrist appointment in the morning. She testified that the caseworker told her that it was mandatory for the claimant to show up for her WF/JET appointment and that she must show up. The claimant testified that after this conversation, she called the worker back and left a message indicating that she could go to the work site, sign in and leave when it was time for her appointment. The claimant testified that she asked the worker to call her back and let her know if this was what she wanted the claimant to do. She testified that she did not receive any call back from the department worker, so she didn't know she was supposed to attend WF/JET prior to or after her psychiatrist appointment.

The claimant provided testimony that her scheduled hours of WF/JET were 8:00 am to 4:30 pm. She also testified that her psychiatrist appointment was at 10:30 am and that it lasted for an hour or two.

Department policy requires a work-eligible individual to participate in employment and/or self-sufficiency-related activities. PEM 228. The claimant was referred to MRT to be evaluated for any disabilities or limitations on her participation with WF/JET. MRT indicated that the claimant was not disabled and work ready with a limitation of only performing unskilled work (Department Exhibit #1) Thus, the client was a mandatory participant in WF/JET.

The claimant was referred to WF/JET and did attend her orientation. However, the claimant admits that she did not attend at all on the next day, November 4, 2008. Department policy indicates that noncompliance includes instances in which the claimant does not attend a scheduled appointment or meeting and also instances in which the claimant does not participate in employment or self-sufficiency activities. PEM 233A.

In this case, there is no dispute that the claimant was excused for the hours that her psychiatrist appointment occurred. The claimant indicates that she didn't attend either prior to or after her appointment because she was waiting for the department worker to call her back. However, this is not found to be credible. The department worker's case note, which was made two days after the telephone contact, indicates that the claimant told the worker that she could come in and sign in at the work site, and would then leave for her doctor's appointment when it was time. Thus, this Administrative Law Judge finds that the claimant was told that this would be the appropriate way to handle the situation. This would only make sense as the claimant testified her WF/JET hours were from 8:00 am – 4:30 pm and her doctor's appointment wasn't until 10:30 am and would have been completed at 12:30, at the latest. Further, the claimant admitted in her testimony that the department worker stressed to her that her attendance was mandatory.

Department policy requires the department to hold a triage meeting to discuss the noncompliance and address any good cause arguments the claimant may have for the noncompliance. PEM 233A. The claimant testified that she did receive the notice of the triage date and time. The claimant did not attend the triage, thus, no good cause was granted and the claimant's FIP case was closed on December 2, 2008 at midnight. The claimant came into the local DHS office on December 3, 2008, and indicated she had missed the triage appointment due to a medical condition. However, by the time the claimant came into the office, the case had already closed. Thus, the claimant did not provide any evidence of good cause during the negative action period.

The claimant's claim that she didn't attend the triage or make it into the office prior to the case closing due to a medical condition will be addressed. No evidence was presented showing that the claimant had any medical condition that would prevent her from being able to remember

when an appointment was scheduled. In fact, in the MRT evaluation of the claimant, the doctor's assessments indicate the claimant has the ability to "understand, remember and carry out simple instructions" and that she can "make simple, work-related judgments and decisions." (Department Exhibit #1).

However, even if the claimant's argument that she has a medical condition that made her forget the appointment is accepted, she still needs to show good cause for her noncompliance. PEM 233A. Department policy lists several factors that can constitute noncompliance. PEM 233A. The hearing testimony and exhibits do not establish a basis for any of the enumerated good cause factors. The claimant was already determined to be mentally and physically capable of WF/JET participation. The claimant had the ability to attend WF/JET both prior to and after her appointment and, in fact, had been told that the attendance was mandatory. Thus, this Administrative Law Judge finds that the claimant was noncompliant with her WF/JET program requirements and that she did not have any good cause for the noncompliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed the claimant's FIP case in December, 2008 due to the claimant's WF/JET noncompliance.

Accordingly, the department's action is AFFIRMED. SO ORDERED.

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

Date Signed: March 31, 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.

SLK 

cc:

