

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: 2009-9977

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 18, 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 February 18, 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 when MW staff requested a triage be scheduled due to her alleged attendance problems (Department's Exhibits #1-7).

2. Department and MW/JET staff concluded at the triage that the claimant did not have good cause for her attendance problems. Claimant's FIP benefits were terminated effective December 4, 2008. Claimant requested a hearing on December 30, 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).

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.

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.

Department has provided 7 pages of Update/View Case Notes entered by WF/JET staff from October 9, 2008 to December 4, 2008. Some of the notes are about claimant’s behavior at WF/JET site describing her being upset after she was told she was being triaged. An October 16, 2008 WF/JET staff comment is that the claimant was given completed child care forms. An October 22, 2008, comment on claimant’s attendance quotes WF/JET staff person as documenting she had called claimant’s caseworker but the voice mail was full, that the claimant was talked to about being late, and that she stated she had to wait for the cab to pick her son up which causes her to be late. There are no WF/JET staff notes as to what the claimant was told about her issues with son’s transportation.

Claimant’s testimony is that she has a 10 year-old and a 13 year-old son who has a medical condition that requires adult supervision and special transportation to school. Claimant states that the cab that picks up her 13 year-old son does not get to her house until 8:30 a.m. and

this is why she had to be late to WF/JET. Claimant provided with her hearing request a Child Care Family Preservation Need Verification form completed by a doctor in March, 2008. This form states that claimant's son has moderately persistent asthma and seizure disorder, that adult supervision is needed due to severity of his illness, that child care is needed 5 days per week for 7 hours per day until the age of 18, and that supervision is needed in the home while parent is working and child is not in school. Claimant also provided another form from her son's school that shows that her son needs special transportation curb to get to school. Claimant additionally provided a school report for period ending June 12, 2008, showing that her son had from 21 to 52 unexcused absences and 29 excused absences during this period. Claimant states that her son becomes ill while in school and she has to pick him up on many days, and that unexcused absences from school are not really such or a truant officer would have been sent to her house. Claimant also testified that she had applied for day care for her 13 year-old son but her provider was never paid for this care, and she therefore refused to take care of her son again.

Department's only representative at the hearing is a manager, and no WF/JET staff or caseworker(s) that were in charge of claimant's case are present. Evidence presented by the claimant does indicate that her 13 year-old son has a medical condition that requires adult supervision, and also that he is picked up by special transport to be taken to school.

Department's representative does not have sufficient information to either explain what occurred at WF/JET pertaining to claimant's issues of lack of child care for her son or that she must be home until 8:30 a.m. every morning until her son is picked up by special transportation for school. It is also unknown if claimant's departmental caseworker has taken any action to address claimant's day care needs or her transportation issues. Departmental policy does cite such issues as possible good cause for WF/JET noncompliance, as it states:

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.

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.

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.

Furthermore, claimant states she had been told by staff in the past that her 13 year-old son is too old to qualify for day care payments under Child Development and Care (CDC) program. This statement, if indeed made to the claimant, is not totally accurate, as CDC policy does provide for exceptions, and states as follows:

ELIGIBLE CHILDREN

The child(ren) needing day care services must be:

- . under age 13; **or**
- . age 13 but under age 18, and
 - .. unable to dress, feed, or care for him/herself due to a physical or mental handicap;
 - .. require constant care to prevent injury to him/herself or to another due to a physical/mental/psychological condition; and/or
 - .. supervision has been ordered by the court; **or**
- . age 18 and require care due to a physical/mental/ or psychological handicap or a court order, and is:
 - .. a full-time high school student, and
 - .. is reasonably expected to complete high school before reaching age 19.

Verify need for Child Development and Care services for children over age 12 with a copy of the court order or a physician's statement. PEM, Item 703, p. 1.

Claimant's stated barriers to WF/JET noncompliance do not appear to have been properly addressed based on the evidence and testimony presented at this hearing. Department therefore must offer the claimant the opportunity to provide necessary documentations of her alleged barriers to WF/JET participation, and upon receipt of such documentations determine the appropriate WF/JET compliance requirements for her. It is noted that final conclusion may be

that the claimant indeed has no valid reason for any future noncompliance, however, such determination and reasons for it must be clearly documented by the department.

DECISION AND ORDER

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

Accordingly, department's action is REVERSED. Department shall:

1. Reinstatement claimant's FIP benefits retroactive to December 4, 2008, closure date.
2. Issue the claimant any FIP benefits she did not receive as a result of this closure.
3. Send the claimant a checklist asking for any further documentation needed to determine her ability to participate in WF/JET (i.e. regarding her 13 year-old son's medical condition, school records of absences and reasons for them, information about any special transportation son may need to get to school, etc.).
4. Address possible CDC payments for claimant's 13 year-old son in accordance with departmental policy for day care eligibility for children of this age.
5. If the claimant fails to return requested documentation, refer her back to WF/JET without the need to address any barriers alleged by the claimant that prevent her from participation.

SO ORDERED.

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

Date Signed: February 25, 2009

Date Mailed: February 27, 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]