

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: 2010-14661
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2010
Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 May 19, 2010. Claimant and her mother appeared and testified.

ISSUE

Did the Department of Human Services properly sanction Claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities?

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 an ongoing recipient of Family Independence Program (FIP) benefits. Claimant was required to participate in the Michigan Works Agency/Jobs Education and Training Program (JET) for 20 hours per week.

(2) On November 25, 2009, Claimant attended a triage meeting. Claimant accepted the Department's determination that she had been non-compliant with her Jobs Education and Training Program (JET) requirements. Claimant signed a First Non-Compliance Letter (DHS-754) and agreed to a compliance test of completing 20 hours of job search activity by 12:00 pm December 2, 2009.

(3) On December 1, 2009, Claimant submitted some job search paperwork printed off the internet to the Jobs Education and Training Program (JET).

(4) On December 2, 2009, Claimant submitted additional job search paperwork at the Jobs Education and Training Program (JET). That paperwork consisted of job search logs showing three applications and more internet based job search activity. After some discussion between DHS and Michigan Works Agency personnel it was decided that Claimant had failed the compliance test. Claimant was sent a Notice of Case Action (DHS-1605) stating her Family Independence Program (FIP) case would close.

(5) On December 15, 2009, Claimant submitted a request for hearing.

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 (formerly known as the Family Independence Agency) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

FAILURE TO MEET EMPLOYMENT AND/OR SELSUFFICIENCY-RELATED REQUIREMENTS: FIP

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

All Work Eligible Individual (WEI) and adult non-WEIs (except ineligible grantees, clients deferred for lack of child care (DC) and disqualified aliens), see [BEM 228](#), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

Depending on the case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).
- Case closure for a minimum of three or 12 months.

See BEM 233B for the Food Assistance Program (FAP) policy when the FIP penalty is closure. For the Refugee Assistance Program (RAP) penalty policy, see BEM 233C.

NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELFSUFFICIENCY-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:

Exception: Do not apply the three or 12 month penalty to ineligible caretakers, clients deferred for lack of child care (DC) and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification.

Clients can reapply at any time.

- 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.

Note: FIS should clear the FAST Fall Out Report and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST non-completion.

- Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).

Note: FIS must have scheduled a FSSP completion appointment with the client and the client failed to attend before considering a client noncompliant for FSSP non-completion.

- Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP) or PRPFC.

- Provide legitimate documentation of work participation.
- 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.

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.

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.

Begin the sanction period with the first pay period of a month. Penalties are automatically calculated by the entry of noncompliance without good cause on the FSSP. This applies to active FIP cases, including those with a member add who is a WEI JET participant.

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 requirements 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.

PROCESSING THE FIP CLOSURE

Follow the procedures outlined below for processing the FIP closure:

- Send a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance, within three days after learning of the noncompliance. You must include the following information on the DHS-2444:
 - The date(s) of the noncompliance.
 - The reason the client was determined to be noncompliant.
 - The penalty that will be imposed.
 - Schedule a triage to be held within the negative action period.
- Determine good cause during triage and prior to the negative action effective date. Good cause must be verified and can be based on information already on file with the DHS or the JET program.

Document the good cause determination on the sanction detail screen.

First Case Noncompliance

Without Loss of Benefits

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is "No Good Cause", do the following:

1. Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.
2. Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period.
3. Advise the client that the instance of noncompliance will remain on record even if the client complies. The noncompliance will be excused, but not erased and could result in longer sanctions if the client is noncompliant in the future.
4. If the client accepts the offer to comply and agrees with the

department's decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754.

5. When a phone triage is conducted for a first noncompliance and the client agrees to comply, complete the DHS-754 as you would complete for an in-person triage meeting. When completing the form 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 and the JET case manager was not included in the phone triage.
6. Enter the outcome of the *Excuse Offer* in Bridges.
7. When the client verifies compliance before the *Excuse Offer* due date and is meeting the assigned activity that corrects the noncompliance, reinstate the case with no loss of benefits.

Note: Verification of completion of a compliance activity may include a signed copy of the DHS-754 or any collateral contact with JET or other service provider.

8. If the client **does not accept** the offer to comply, document the decision in Bridges.
9. If the client **disagrees** with the department's decision of noncompliance without good cause, use the second check box on the DHS-754 that advises the client not to sign the form. Assist the client with filing a hearing request and advise them that if they lose the hearing, they will receive a new notice of noncompliance and a new meeting date and they have the right to agree to activities outlined on the DHS-754 and avoid the financial penalty at that time, unless another group member uses the family's first excuse before the hearing issue is settled.
10. Send a new DHS-2444 with an appointment date and time. The client must attend the triage and comply with assigned activities before the 754 due date.

11. You must enter all triage results at one time in Bridges. If the client fails to meet or contact the FIS or fails to provide verification of compliance without good cause, the three-month sanction applies.

This policy only applies for the first case of noncompliance on or after April 1, 2007. It is only offered one time for each case for the first noncompliant member on that case when there is no good cause. (BEM 233A)

On the surface of this case it appears the Department followed the guidance in their policy. However, there is a deficiency of evidence to support the determination that Claimant failed the compliance test. The record does not contain the job search documentation Claimant submitted. There is no evidence in the record on how many hours Claimant's activity was actually credited for. It is noted that Claimant's triage meeting was held on Wednesday November 25 at 2:45 PM. Claimant was offered a compliance test of meeting her normal weekly participation requirements in 7 calendar days. Those 7 days were Thanksgiving Day, Friday, Saturday, and Sunday of Thanksgiving weekend, a regular Monday, Tuesday, and the first half of Wednesday December 2nd. There is no evidence in the record on whether Claimant was credited for any holiday hours during which she would not be able to job search. There is no evidence in the record on how, if at all, internet job search activities are counted, how much if any credit Claimant received for her internet based job search activity, or evidence on whether Claimant was made aware of any rules governing internet based job search activities.

The evidence in this record is insufficient to establish that Claimant failed the compliance test. The Department has not met its evidentiary burden to show their action is correct in accordance with law and policy. Thus the action must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly sanction Claimant's Family

Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that Claimant's Family Independence Program (FIP) case be reinstated and she be supplemented any benefits she was otherwise eligible for but did not receive. At that point, the Department may either consider this compliance test successful and reassign Claimant to participate in appropriate employment and/or self-sufficiency related activities, or assign Claimant to repeat the compliance test.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 07, 2010

Date Mailed: June 8, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

GFH/alc

cc:

