

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: 2010-1866
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 16, 2009
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 hearing was held on Wednesday, December 16, 2009. The claimant personally appeared and testified on her own behalf with her attorney [REDACTED]

ISSUE

Did the department act in accordance with department policy when it took action to close the claimant's Family Independence Program (FIP) as a result of the claimant's son's refusal to cooperative with the required Work First (WF) and Jobs, Education and Training (JET) 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) The claimant was a recipient of FIP benefits.

(2) Subsequently, the claimant reported that her 17-year-old son, [REDACTED], had graduated from high school. Since he is 16 years or older, a high school graduate, and still living in the home, the claimant's son became a mandatory work participant and was required to participate with WF/JET.

(3) On July 6, 2008, the work requirements for WF/JET were explained to the claimant's son and he completed and signed the WF/JET work responsibility contract, the WF/JET requirements, and a request for transportation assistance and supportive services. (Department Exhibit 6-9)

(4) On July 29, 2009, the claimant's son was terminated from Work First for failing to meet the required number of job search hours. (Department Exhibit 3-5)

(5) On August 3, 2009, the department caseworker sent the claimant's son a Notice of Noncompliance, DHS-2444, about a triage dated August 13, 2009. (Department Exhibit 18-19)

(6) On August 13, 2009, the claimant and her son were a no-call, no-show for the triage appointment. (Department Exhibit 2)

(7) On August 26, 2009, the department caseworker made a Good Cause Determination, DHS-71, that there was no good cause for the claimant's son not to participate with WF/JET. The claimant's son is 17-year-old grantee where he has graduated from high school and is still in the home, resulting in him being a mandatory WF/JET member. The claimant's son was terminated from WF/JET on July 29, 2009 for non-participation. The claimant's son was a no-call, no-show for triage. Based on available information, no reason for good cause was able to be determined. The first sanction is to apply a three-month penalty. (Department Exhibit 1)

(8) On August 26, 2009, the department caseworker sent the claimant a letter stating that her FIP case would be closed for three months as the result of her son's non-participation in WF/JET activities. (Department Exhibit 24-27)

(9) On September 29, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(10) On November 6, 2009, the WF/JET worker submitted a case note that the claimant's son came in stating he was attending [REDACTED] and was upset that his mother's cash assistance had been closed. The claimant's file was looked up where it showed that the claimant's case was closed for a no-show for the triage meeting where it was explained to the claimant's son that there was nothing that the JET office could do since it was closed and suggested he go to DHS if he needed more information. (Department Exhibit A)

(11) During the hearing, the claimant stated that her son did not inform her he was going on vacation. The claimant's son is 17, not 18. The claimant stated that she was not informed that her underage son was missing appointments and that the triage notice was sent to the claimant's son and not to her. The claimant stated that she did not know that he was missing WF/JET or know about the triage date. The claimant's son started [REDACTED] [REDACTED] in the fall of 2009. The claimant's son turns 18 on [REDACTED]

(12) During the hearing, the department caseworker stated that the claimant's FAP was deferred, but her FIP was cancelled. The only program affected was the claimant's FIP benefits. Since the claimant's son was required in WF/JET, he would be the one getting the notice, not the claimant. There were no allowances made for the fact that the claimant's son was a minor and not 18 years of age.

(13) During the hearing, the claimant's attorney stated that because the claimant's son was under the age of 18 and a minor that the department should have been required to inform the claimant if her son was missing WF/JET activities or about the triage meeting since the claimant as the son's mother would have had an option about (1) to make her son participate or (2) that he would have to leave the home so that she could continue to be eligible for FIP.

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 department manuals provide the following policy statement and instructions for caseworkers:

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.

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 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.

Work Around For Noncompliant Member Adds

You must follow the instructions below when a member add is **noncompliant** with JET prior to being added to the FIP case:

- . Schedule a triage (DHS-2444) with the noncompliant member and send a manual DHS-176, Client Notice, to the grantee for negative action/closure due to noncompliance. Use the language for either negative action code “405” or “407”.
- . Hold the triage.
- . If good cause exists, no further action is required; add the member.
- . Central office will immediately close the case on the closure date or pend for the date on the DHS-176. PEM 233A, pp. 12-13.

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.

Medicaid

Termination of FIP for noncompliance with employment-related activities **does** not mean ineligibility for Medicaid. PEM 233A, p. 11.

REAPPLICATION AND REINSTATEMENT

There is no minimum sanction period on applications denied due to noncompliance. If the noncompliance was for an applicant refusing **employment**, see “Benefit Delay for Refusing Employment”. Clients may reapply at any time. All other penalties for noncompliance must be in effect for the minimum number of months of the penalty.

DEPARTMENT POLICY

FIP, RAP Cash

Federal and State laws require each Work Eligible Individual (WEI) In the FIP and RAP group to participate in Jobs, Education and Training (JET) Program or other employment-related activity unless temporarily 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 obtain employment. Apply FIP policy to RAP cash clients unless a separate RAP cash policy is mentioned in PEM 233C.

JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth (DELEG) through the Michigan Works! Agencies (MWAs). The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. JET case managers use the One-Stop Management Information System also known as the OSMIS to record the clients assigned activities and participation. In this item the OSMIS is referred to as the MIS.

WEIs not referred to JET will participate in other activities to overcome barriers so they may eventually be referred to JET or other employment service provider. DHS must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP).

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. For more about penalties refer to:

- BEM 233A - FIP-related penalties.
- BEM 233C - RAP Cash penalties.

See BEM 230B and BEM 233B for FAP employment requirements. BEM 230A, p. 1.

**MANDATORY
PARTICIPATION IN
EMPLOYMENT
SERVICES**

All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. WEIs who are temporarily deferred are required to participate in activities that will help them overcome

barriers and prepare them for employment or referral to an employment service provider. BEM 230A, p. 3

**Meeting
Participation
Through Education**

Dependents Clients who are WEIs and full-time students in elementary or high school are noted here.

Age 16 or 17 Full-time high school students are given the participation of Secondary Education. They are neither required to submit a FAST, develop an FSSP, nor participate in employment services as long as they continue full-time school attendance. BEM 230A, p. 7

In the instant case, the claimant testified that she did not know that her son was not participating in WF/JET activities. She also testified that she did not know about the triage meeting on August 13, 2009, because the letter was sent to her son and not to her.

This Administrative Law Judge finds that the claimant's son, once he graduated from high school and was still a part of the household composition, was required to participate with WF/JET. The claimant's son is 17 years of age. This Administrative Law Judge has a problem with the department not contacting the claimant since her son is still a minor living in her home when he failed to participate with WF/JET because at 17 years of age, he does not understand the consequences of his actions of not participating in WF/JET. The claimant should have been contacted in writing or by telephone to inform that her son was not participating and that her benefits could be cancelled as the result of his non-participation. As a result, the claimant would have had the choice to make her son participate as is required or that he would have to leave her home and not be part of the household composition. There is nothing in policy that requires the department to send the claimant a notice because her son is under 18, but since he is under 18

and a minor and the claimant is his mother, the department needed to give her notice of his lack of participation and the potential consequences.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did act in accordance with department policy when it closed the claimant's FIP case due to the claimant's son's refusal to cooperate with the required WF/JET activities. However, the claimant's son is a minor and not an adult at 17, which makes the claimant responsible for his actions and that should have resulted in her being given notice.

Accordingly, the department's decision is **REVERSED**. The department is ordered to reinstate the claimant's FIP benefits that were taken during the three month penalty and resend the claimant's son to WF/JET and copy the claimant on all correspondence about her son's participation until he leaves the home or until he turns 18.

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

Date Signed: January 14, 2010

Date Mailed: January 14, 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.

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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.

CGF/vmc

cc:

