

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: 2010-19066
Issue No: 1005
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 27, 2010
Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on January 26, 2010. After due notice, a telephone hearing was held on Tuesday, April 27, 2010.

ISSUE

Whether the Department of Human Services (Department) properly terminated the Claimant's Family Independence Program (FIP) benefits?

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 received FIP benefits before February 1, 2010.
- (2) On July 21, 2009, the Claimant agreed to cooperate with the requirements of the FIP program. Department Exhibits 3 – 4.

(3) The Department sent the Claimant notice on November 24, 2009, that verification of her training hours for the weeks of November 8, 2009, and November 15, 2009, had not been received. Department Exhibits 6 & 8.

(4) A JET Triage meeting was held on December 4, 2009. Department Exhibit 8.

(5) The Department scheduled the Claimant for a non-compliance test to be held on January 11, 2010. Department Exhibit 12.

(6) The Claimant informed the Department that she could not attend the compliance test on January 8, 2010, because it conflicted with her school schedule. Department Exhibit 13.

(7) The Department notified the Claimant that her FIP benefits would be terminated on February 1, 2010, and that she was not eligible to participate in the FIP program until after April 30, 2010. Department Exhibit 2.

(8) The Department received the Claimants request for a hearing on January 26, 2010, protesting the termination of her FIP benefits.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to

achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by DHS when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments will be covered by the JET case manager when a mandatory JET participant is referred at application. PEM 229, p. 1.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities 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 stable employment. JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) 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. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1.

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).
- .. Provide legitimate documentation of work participation.
- .. Appear for a scheduled appointment or meeting related to assigned activities.
- .. 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.

The Department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. PEM 233A, p. 9

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. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. PEM 233A, p. 4, 5

Good cause should be determined 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. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. PEM 233A, p. 9

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 not less than 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 not less than 3 calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.
- . The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. PEM, Item 233A.

Noncompliance, without good cause, with employment requirements for FIP/RAP(SEE PEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. PEM 233b, p. 1 The FAP group member should be disqualified for noncompliance when all the following exist:

- . The client was active both FIP and FAP on the date of the FIP noncompliance, and

- . The client did not comply with FIP/RAP employment requirements, and
- . The client is subject to a penalty on the FIP/RAP program, and
- . The client is not deferred from FAP work requirements (see DEFERRALS in PEM 230B), and
- . The client did not have good cause for the noncompliance. PEM 233B, p.2

The Department should budget the Last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the first two noncompliances or 12 months for the third and subsequent noncompliances) after the FIP case closes for employment and/or self sufficiency-related noncompliance. The Last FIP grant amount is the grant amount the client received immediately before the FIP case closed.

The Department should budget the Last FIP for three or 12 months whether or not the noncompliant person is disqualified from FAP. If a FIP penalty is imposed; the Last FIP grant amount must be budgeted. The Department should budget the Last FIP amount only when the client was receiving FAP on the date of the FIP noncompliance. If the client was only applying for FIP and violated a FIP employment and/or self-sufficiency-related requirement, the FAP grant would not be affected. PEM 233B, p.2

In this case, the Department scheduled the Claimant for a non-compliance test at Michigan Works! to be held on January 11, 2010 at 8:30 a.m., and the DHS-4785 form includes notice to reschedule as soon as possible before you miss your appointment. On January 8, 2010, the Claimant reported to the Department that she could not attend the appointment on January 11, 2010, and attempted to reschedule to a time that did not conflict with her classes. The Claimant did not attend the appointment due to a conflict with her class schedule.

The form sent to the Claimant notifying her of the appointment includes instructions for rescheduling the meeting. The Claimant notified the Department prior to her scheduled meeting that she was unable to attend, and expressed her desire to reschedule. The Claimant has not failed to reasonably cooperate with the Department's requests. Therefore, the Department has failed to establish that it acted properly when terminating the Claimant's FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has failed to establish that it acted properly when it terminated the Claimant's FIP benefits.

Accordingly, the Department's FIP eligibility determination is REVERSED. It is further ORDERED that the Department shall:

1. Remove the non-compliance negative action from the Claimant's case file.
2. Reschedule a compliance test with the Claimant.
3. Notify the Claimant in writing of the Department's revised FIP eligibility determination.

/s/

Kevin Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 17, 2010

Date Mailed: May 18, 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.

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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.

KS/vc

cc:

