

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant,

Reg No: 2010-22181

Issue No: 1038

Case No: ██████████

Load No: ██████████

Hearing Date:

March 25, 2010

Shiawassee County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

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 conducted from Lansing, Michigan on March 25, 2010.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant was a recipient of FIP benefits and a mandatory Work First/Jobs, Employment and Training (WF/JET) participant.

(2) On December 23, 2009, the Department terminated Claimant from the WF/JET program for displaying a bad attitude while completing community service hours at [REDACTED] (Exhibit 1)

(3) On January 28, 2010, the Department sent Claimant a Notice of Noncompliance which stated in pertinent part - “Records show that you have refused or failed to participate as required in employment and/or self sufficiency related activities for FIP, RAP and FAP as noted below:.....A meeting has been scheduled to give you an opportunity to report and verify your reasons for non-compliance.” (Exhibit 2)

(4) On January 28, 2010, the Department mailed Claimant a Notice of Case Action which informed her that her FIP case would close effective March 1, 2010 because “she failed to participate in employment and/or self sufficiency related activities.....” (Exhibit 7)

(5) On February 18, 2010, a triage meeting was held and the Department made a no good cause determination.

(6) On February 18, 2010, the Department received Claimant’s hearing request 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) 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. BEM 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. BEM 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. BEM 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. BEM 233A, p. 7-8

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. BEM 233A, p. 3-4

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. BEM 233A, p. 7

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. BEM, p.6

In the instant case, [REDACTED] informed the Department that a few employees had complained about Claimant’s attitude, but that she had spoken with Claimant and decided to give her another chance. The Department, in turn, emailed [REDACTED] back and informed her that Claimant would not be returning as Claimant had already used up her last chance. At hearing,

Claimant denied having an attitude problem, but if she did it was due to her frustration with the Department, her job duties at [REDACTED] and her unmedicated diabetes. In addition, the issue was discussed and resolved after she spoke with [REDACTED]. Nobody who appeared for the Department at hearing had any personal knowledge of Claimant's alleged "attitude" at [REDACTED] or spoke with anybody at [REDACTED] about it. In addition, nobody who appeared for the Department at hearing was present at the triage. The Department representatives noted that Claimant was alleged to have had an attitude when her triage was rescheduled due to weather and at the triage by the caseworker who attended it, but whether Claimant did or did not has no real bearing on the alleged noncompliance issue at [REDACTED].

With the above said, I do not find that the Department acted in accordance with policy in terminating Claimant's FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find that the Department acted in accordance with policy in terminating Claimant's FIP benefits.

Accordingly, the Department's FIP eligibility determination is REVERSED, it is SO ORDERED. The Department shall:

1. Reinstatement of Claimant's FIP benefits (and any other benefits which were terminated/reduced as a result of the alleged WF/JET noncompliance) retroactive to the closure date.
2. Issue Claimant supplemental benefits she is entitled to, if any.
3. Notify Claimant in writing of the Department's revised determination.

4. Claimant retains the right to request a hearing if she would like to contest the Department's revised determination.

/s/ _____
Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 6, 2010

Date Mailed: April 7, 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.

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.

SMB/vmc

cc:

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