

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: 2010-28287
Issue No: 1038/3028/6019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 June 17, 2010.

ISSUE

Whether the department properly determined that claimant was in noncompliance with self-sufficiency requirements for the Family Independence Program (FIP), Food Assistance Program (FAP), and Child Development and Care (CDC).

FINDINGS OF FACT

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

(1) On or about January 12, 2010, it came to the department's attention that claimant had ended employment. Department Exhibit A, pg 1.

(2) January 12, 2010, a Notice of Noncompliance (DHS-2444) was sent to claimant indicating a triage appointment was set for her on January 22, 2010 to discuss good cause for ending employment. Department Exhibit A, pgs 4-5.

(3) January 22, 2010, the triage was held and it was determined claimant did not have good cause for ending employment. Department Exhibit A, pgs 2-3.

(4) January 22, 2010, the department sent claimant written notice that her FIP benefits would terminate and her FAP benefits would be decreased. Department Exhibit A, pgs 6-8.

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).

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Jobs, Education, and Training (JET) Program or other employment services unless temporarily deferred or engaged in activities that meet participation requirements. Bridges Eligibility Manual (BEM) 230A; MCL.57(f); Rehabilitation Act of 1973(Section 504); Americans with Disabilities Act of 1999; Michigan Persons with Disabilities Civil Rights Act.

The department requires clients to participate in employment and self-sufficiency related activities and accept employment when offered. The focus is to assist clients in removing

barriers so they can participate in activities that lead to self-sufficiency. 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 some compliance have been removed. The goal is to bring the client into compliance. Depending on case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimal penalty).
- Case closure for minimum of 3 or 12 months.

Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to:
 - Appear and participate in the JET program or other service provider.
 - Complete a family automated screening tool as assigned as the first step of the FSFC process.
 - Develop a family self-sufficiency plan.
 - Comply with activities assigned on the family self-sufficiency plan.
 - Provide legitimate documentation of work participation.
 - Appear for scheduled appointment or meeting relating to assigned activities.
 - Participate in employment and/or self-sufficiency related activities.
 - Accept a job referral.
 - Appear for a job interview.

- State orally or in writing a definite attempt not to comply with program requirements.
- Threatening, physically abusing, or otherwise behaving disruptively towards anyone conducting or participating in an employment and/or self-sufficiency related activity.
- Refusing employment support services if the refusal prevents participating in employment and/or self-sufficiency related activity.

Refusing suitable employment means doing any of the following:

- Voluntarily reducing hours or otherwise reducing earnings.
- Quitting a job unless verification that the client changed jobs or reduced hours in order to participate in a Michigan Works approved education and training program or a team parent or dependent child quits a seasonal job to return to 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 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 it 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.

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.

The penalties 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 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.

For a first noncompliance, if the noncompliant client meets or if a phone triage is held with a department manager and/or the JET case manager and a decision regarding the noncompliance is no good cause, the department may offer claimant the opportunity to comply. If claimant accepts the offer to comply, agrees with department's decision of noncompliance without good cause, and completes the required components to be considered in compliance, claimant's noncompliance is excused but not erased. Bridges Eligibility Manual 233A; MCL 400.57(g); 42 USC 607.

Non deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. However, unlike cash benefits, which are tied to participation in the JET program, there are no hourly work participation requirements for the Food Assistance Program. In order to receive FAP benefits, not deferred adults must comply with the following work requirements:

- Non deferred adults who are already working may not do any of the following:
 - Voluntarily quit a job of 30 hours or more per week without good cause.

- Voluntarily reduce hours of employment below 30 hours per week without good cause.
- Be fired from a job for misconduct or absenteeism.

Bridges Eligibility Manual (BEM) 230B; Food Stamp Act of 1977, as amended; 7 CFR Parts 272 and 273; FNS Waiver 2040026.

Michigan's FAP employment and training program is voluntary and penalties for noncompliance may only apply in the following two situations:

- Client is active FIP/RAP and FAP and becomes noncompliant with a cash program requirement without good cause.
- Client is pending or active FAP only and refuses employment (voluntarily quits a job, is fired, or voluntarily reduces the hours of employment) without good cause.

A noncompliant person must serve a minimum one month or six month disqualification period unless one of the criteria for ending a disqualification early exists.

End this disqualification early if the noncompliant person:

- Complies with work assignments for a cash program, or
- Obtains comparable employment in salary or hours to the job which was lost, or
- Meets a deferral reason other than unemployment benefit (UB) application/recipient, or
- Leaves the group.

BEM 233B; Food Stamp Act of 1977, as amended; R 400.3610 and 7 CFR 272 and 273.5; FIP 1939 PA 280.

In this case, claimant did not comply with JET work and/or self-sufficiency requirements. Claimant was dismissed for misconduct from her employment. At hearing, claimant indicated

that her dismissal was racially motivated. Dismissal or leaving a job due to civil rights violation is a reason for finding good cause for leaving employment. However, such a claim must be established by competent evidence. At hearing, claimant testified that another employee said that the owner of the company said something about claimant's race. At hearing, claimant submitted a typed, undated, unsigned letter from her former manager indicating "there may have been some racial prejudice involved based on comments the owner said to me." (Claimant Exhibit A). Neither client nor the letter submitted indicate any details of civil rights violation, merely indicating that it may have or possibly someone said something. The letter from the former manager is not dated, it is not signed, and is not notarized. The purported author of the document was not under oath at the time she made the statement. Accordingly, such evidence can be given little legal weight. Claimant called a witness who testified that he had been unfairly terminated from his employment. No documentary evidence was provided to establish unfair dismissal. In any case, unfair dismissal of a co-worker does not automatically mean that claimant was dismissed unfairly. Accordingly, the department has met its burden of proof that claimant left employment without good cause. Accordingly, the department properly sanctioned claimant's FIP and FAP benefits. As claimant was no longer working, CDC benefits would not be authorized. Finding of Fact 1-4.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant did not participate in employment and/or self-sufficiency related activities as required to qualify for Family Independence Program, Food Assistance Program, and Child Development and Care benefits.

Accordingly, the department's action is, hereby, UPHELD.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 23, 2010

Date Mailed: September 30, 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 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.

JAB/db

cc:

