

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: 2010-31219
Issue No: 1038; 3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 9, 2010
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 June 9, 2010. The claimant personally appeared and provided testimony.

ISSUES

1. Did the department properly determine the claimant's Family Independence Program (FIP) case should be closed for Work First/Jobs, Education and Training (WF/JET) program noncompliance in March, 2010?
2. Did the department properly sanction the claimant from the Food Assistance Program (FAP) program group for the FIP noncompliance in March, 2010?

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 mandatory WF/JET program participant for 30 hours each week.

2. The claimant signed the agreement to comply with LCC WF rules on July 9, 2007. (Department Exhibit 10, 13)
3. On May 18, 2009, the claimant received a first warning from WF/JET indicating that she failed to complete all her job searching hours. (Department Exhibit 12)
4. On May 26, 2009, the claimant received a written warning because she had failed to participate in the required amount of job search hours and failed to punch in/out for job searching. (Department Exhibit 11)
5. In January, 2010, the claimant was assigned to do 16 hours of community service and work 14 hours each week at two part-time jobs, one as a home health aide and one doing housekeeping for her daughter. (Department Exhibit 3)
6. On March 12, 2010 WF/JET received notice from DHS that the claimant indicated that her housekeeping job was temporary and that she wasn't working it any longer. (Department Exhibit 3)
7. Since WF/JET had been counting the claimant's hours of housekeeping (six hours per week) into her totals of weekly requirements, the claimant was not getting in her required hours if she was not working at her housekeeping job. (Department Exhibit 3)
8. The claimant was mailed a Notice of Noncompliance (DHS-2444) on March 15, 2010, scheduling her for a triage appointment on March 24, 2010. (Department Exhibit 1 – 2)
9. No good cause was granted to the claimant for the noncompliance. The claimant was mailed a Notice of Case Action (DHS-1605), informing her that her FIP benefits were closing and that she would be sanctioned from the FAP program group. (Department Exhibit 14 – 16)

10. The claimant submitted a hearing request on April 6, 2010.

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:

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 BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

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. BEM 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 related to assigned activities.
 - .. Provide legitimate documentation of work participation.
 - .. 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.

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 in Bridges and the FSSP under the “Participation and Compliance” tab.

See “School Attendance” BEM 201 for good cause when minor parents do not attend school.

Employed 40 Hours

Client Unfit

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. BEM 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. BEM 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. BEM 233A, pp.4-5.

EFIP

EFIP unless noncompliance is job quit, firing or voluntarily reducing hours of employment.

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.

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. BEM 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. BEM 233A, pp. 10-11.

When to Disqualify

- . Disqualify a FAP group member for noncompliance when:
- . The client was active both FIP and FAP on the date of the FIP noncompliance, and
- . The client did not comply with FIP employment requirements, and
- . The client is not deferred from FAP work requirements (see DEFERRALS in BEM 230B), and the client did not have good cause for the noncompliance. BEM 233B, p. 1.

Noncompliance is defined by department policy as failing or refusing to do a number of activities, such as attending and participating with WF/JET, completing the FAST survey, completing job applications, participating in employment or self-sufficiency-related activities, providing legitimate documentation of work participation, etc. BEM 233A. In this case, the claimant indicates that she had reported that she wasn't working the second job and that no one told her she would have to put in additional hours at WF/JET.

The claimant does not dispute that she was required to participate with WF/JET for a total of 30 hours each week. The claimant testified that she was to perform 16 hours of community service each week and work for a total of 14 hours each week.

The claimant reported in September, 2009 that she was going to be doing housekeeping work for her daughter. The department had the claimant's daughter complete a Verification of Employment form, which was signed on October 31, 2009. The form indicates that the work will be permanent.

When the claimant submitted her community service verification on February 11, 2010, she indicated on the bottom of the form that her daughter hadn't had her work for this month. However, the claimant did not turn in any additional community service hours, job search hours or other employment hours. The claimant provided a letter from her daughter at this hearing stating the claimant worked doing cleaning in December and once in January, but that she could no longer afford to have her mother doing the housework.

The claimant indicates that she was not told she would have to do additional hours with WF/JET to make up for the lack of employment hours. However, the WF/JET staff member indicated that WF/JET did not know that the claimant wasn't working the housekeeping job, so there was no way for them to make sure that she was job searching to get her 30 hour requirement completed. Further, the department points out that the claimant has participated with WF/JET for about three years and is well aware of her WF/JET program requirements.

It is further noted that the claimant had been issued two warnings for her participation. Thus, it would appear that the claimant should have been well aware of her responsibilities with WF/JET. The claimant knew she was required to participate with WF/JET for 30 hours each week. It is fairly simple math to know that the claimant isn't participating for 30 hours if she is

only doing 16 hours of community service and working as a home health aide for eight hours each week. Thus, the claimant should have come and talk to a WF/JET staff member to figure out what she needed to do to complete her 30 hour requirement each week. As the claimant did not get in her required amount of hours for about three months, she is noncompliant with WF/JET program requirements.

A claimant can have the noncompliance excused if they provide a good cause reason. Good cause is defined as 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. BEM 233A. The claimant indicates that she was sick and had some medical appointments and testing during the noncompliance time period. However, the claimant failed to report any medical issues at the triage appointment. Further, the claimant provided no documentation of any medically necessary absences to the department or this Administrative Law Judge. Thus, this Administrative Law Judge is unable to find any good cause for the claimant's noncompliance.

Department policy indicates that when a claimant is active FIP and FAP when a FIP noncompliance occurs, the claimant must be sanctioned from the FAP group unless she meets the criteria for a deferral. BEM 233B. In this case, the claimant does not meet any of the policy criteria for a deferral, so the department properly removed her from the FAP program group during the FIP sanction.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that:

1. The department properly determined the claimant was noncompliant with WF/JET program requirements without good cause and properly determined her FIP case should be terminated in March, 2010.

2. The department properly sanctioned the claimant from the Food Assistance Program (FAP) program group for the FIP noncompliance in March, 2010.

Accordingly, the department's actions are UPHELD. SO ORDERED.

/s/

Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 23, 2010

Date Mailed: June 24, 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.

SLK [REDACTED]

cc: [REDACTED]