

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: 2010-35497
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2010
Ingham 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 May 17, 2010. After due notice, a telephone hearing was held on Thursday, July 29, 2010.

ISSUE

Whether the Department of Human Services (Department) properly sanctioned the Claimant's Family Independence Program (FIP) case for noncompliance with the Jobs, Education, and Training (JET) program?

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 until May 1, 2010.

(2) The Department referred the Claimant to the Jobs, Education, and Training (JET) program as a condition of receiving FIP benefits on March 1, 2010, and assigned to a JET orientation. Department Exhibit 16.

(3) The Claimant did not attend the JET orientation, and on March 12, 2010, the Department considered her noncompliant with the JET program. Department Exhibit 9.

(4) The Department conducted a triage meeting on March 24, 2010. Department Exhibit 9.

(5) On April 5, 2010, the Department notified the Claimant that it would terminate her FIP benefits as of May 1, 2010. The U.S. Postal Service returned this notice as undeliverable. Department Exhibit 3.

(6) The Department received the Claimant's request for a hearing on May 17, 2010, protesting the termination of her FIP benefits.

(7) On May 27, 2010, the Department sent the Claimant notice that it would conduct an administrative hearing on June 14, 2010, to review her grievance. The U.S. Postal Service returned this notice as undeliverable.

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, 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 Claimant was receiving FIP benefits. The Department classified the Claimant as a work eligible individual as of February 17, 2010, when a physician cleared her for work with limitations. The Department referred the Claimant to the JET program as a condition of receiving FIP benefits and scheduled her to attend an orientation on March 1, 2010. On March 12, 2010, the Claimant had not attended or rescheduled her JET orientation. A triage meeting was held on March 24, 2010, where the Claimant was given the opportunity to establish good cause for her noncompliance with the JET program. The Claimant did not show up for the triage meeting, and the Department did not find good cause for her noncompliance with the JET program. The Department notified the Claimant that it would terminate her FIP benefits on May 1, 2010.

The Claimant argued that she has not been receiving correspondence from the Department. The Claimant testified that she would have been able to establish good cause for her noncompliance with the JET program if she had been given the opportunity to attend the triage meeting.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). In this case, there is evidence to rebut the presumption that the Claimant received notice of the triage meeting. The Department sent the Claimant notice that her FIP benefits had been terminated, and notice to appear at an administrative hearing. Although both of these notices were properly addressed, they were both returned by the U.S. Postal Service as undeliverable. The notice of triage was not returned to the Department by the post office, but the Claimant testified that she did not receive it.

The Department did not offer any evidence that it notified the Claimant of the triage meeting except for its reliance on the properly address notice sent on March 15, 2010. The case action and hearing notices were also properly addressed, and the Department could not explain why they were returned. Although the notice of the triage meeting may not have been returned by the U.S. Postal Service, there is significant doubt that it reached the Claimant.

The Claimant has established good cause for failing to attend the triage meeting because she did not receive proper notice through the mail.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant established good cause for failing to attend the triage meeting.

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

1. Schedule a triage meeting with the Claimant.
2. If the Claimant establishes good cause for her noncompliance with the JET program at this triage meeting, delete the negative action from the Claimant's case and initiate a determination of the Claimant's FIP eligibility as of May 1, 2010.

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

Date Signed: August 20, 2010

Date Mailed: August 23, 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.

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:

