

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: 2010-41270

Issue No: 1038, 3029

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 28, 2010

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on July 28, 2010. Claimant appeared and testified.

ISSUES

Did the Department of Human Services properly sanction Claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities?

Did the Department of Human Services properly sanction Claimant's Food Assistance Program (FAP) case for failure to participate in employment and/or self-sufficiency related activities?

FINDINGS OF FACT

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

(1) Claimant was an ongoing recipient of Family Independence Program (FIP) benefits. Claimant's benefit group consists of herself and her one child who is under the age of 6. Claimant was a mandatory participant in the Michigan Works Agency/Jobs Education and Training Program (JET).

(2) On February 26, 2010, Claimant met with her JET case manager. Claimant was not meeting her job search participation requirements. Claimant told the case manager that she was having medical problems with her pregnancy. Claimant was told to provide medical documentation to support her assertion by March 3, 2010.

(3) On March 11, 2010, the Michigan Works Agency/Jobs Education and Training Program (JET) had not received any medical documentation from Claimant and requested a triage due to Claimant's failure to participate in employment and/or self-sufficiency related activities.

(4) On March 18, 2010, a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting for March 25, 2010, was sent to Claimant's address of record.

(5) On March 25, 2010, Claimant did not participate in the triage meeting or call to reschedule. The Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.

(6) On April 1, 2010, Claimant submitted medical documentation of an appointment that day (4/1/10) and stating she could return to work on 9/6/10. Claimant also informed the Department she had moved.

(7) On May 13, 2010, Claimant was sent a Notice of Case Action (DHS-1605) stating

that her Family Independence Program (FIP) and Food Assistance Program (FAP) case would be sanctioned due to her failure to participate in employment and/or self-sufficiency related activities.

(8) On June 1, 2010, Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) cases were sanctioned.

(9) On June 11, 2010, Claimant submitted a hand written request for hearing "concerning my JET program."

(10) Sometime between June 1 & June 23, 2010, Claimant submitted an application for Family Independence Program (FIP) benefits.

(11) On June 23, 2010, Claimant was sent notice that her application for Family Independence Program (FIP) benefits was denied because her case was in sanction.

(12) On June 28, 2010, Claimant submitted a request for hearing on the June 23, 2010 Notice of Case Action (DHS-1605).

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 (formerly known as the Family Independence Agency) 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 Program Reference Manual (PRM).

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

**FAILURE TO MEET EMPLOYMENT AND/OR
SELSUFFICIENCY- RELATED REQUIREMENTS: FIP**

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

All Work Eligible Individual (WEI) and adult non-WEIs (except ineligible grantees, clients deferred for lack of child care (DC) and disqualified aliens), see [BEM 228](#), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

Depending on the case situation, penalties include the following:

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

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.

NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELFSUFFICIENCY 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:

Exception: Do not apply the three or 12 month penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens.

Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

- 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.

Note: FIS should clear any alerts relating to rejected JET refunds and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST completion.

- Develop a Family Self-Sufficiency Plan (FSSP).

Note: FIS must have scheduled a FSSP completion appointment with the client and the client failed to attend before considering a client noncompliant for FSSP completion.

- Comply with activities assigned on the 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.

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.

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.

Begin the sanction period with the first pay period of a month. Penalties are automatically calculated by the entry of noncompliance without good cause on the FSSP. This applies to active FIP cases, including those with a member add who is a WEI JET participant.

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 requirements 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. (BEM 233A)

FAILURE TO MEET EMPLOYMENT REQUIREMENTS:

FAP

DEPARTMENT PHILOSOPHY

DHS requires participation in employment and/or self-sufficiency related activities associated with the Family Independence Program (FIP) or Refugee Assistance Program (RAP). Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. There are consequences for client, who refuse to participate in FIP/RAP employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause.

DEPARTMENT POLICY

The policies in this item apply to all FAP applicants and recipients age 16 and over. Noncompliance, without good cause, with employment requirements for FIP/RAP (see [BEM 233A](#)) may affect FAP if **both** programs were active on the date of the FIP noncompliance.

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 hours of employment) without good cause.

At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP.

PROCESS FOR FIP/RAP ASSOCIATED NONCOMPLIANCE

When you learn that a client is noncompliant do the following:

- Send the DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days of the noncompliance.

Check all programs that apply to the noncompliance (FIP/ RAP and/or RAP) and the related penalty count that applies to each as outlined on the form.

- Hold the triage appointment/phone conference and document the results in Bridges.

Note: If the client does not participate in the triage meeting, determine good cause for FAP based on information known at the time of the determination.

- Determine FAP good cause separately from the FIP/RAP based on FAP good cause reasons defined later in this item. If a good cause reason is selected for FIP/RAP it also applies to FAP. If the client does not meet one of the FIP/RAP good cause reasons in the drop down list, but does meet one of the FAP only good cause reasons, select the FAP only good cause reason to avoid client disqualification on FAP. Bridges makes both determinations simultaneously.

When To Disqualify

Disqualify a FAP group member 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 BEM 230B), **and**
- The client did not have good cause for the noncompliance. (BEM 233B)

EMPLOYMENT-RELATED ACTIVITIES: FAP

DEPARTMENT PHILOSOPHY

Department of Human Services (DHS) has a unique opportunity to assist families in becoming strong, viable, participative members of the community. By involving the adult members of the household in employment-related activities, we help restore self-confidence and a sense of self-worth. These are cornerstones to

building strong, self-reliant families. The goal of the Food Assistance Program is to ensure sound nutrition among children and adults. In addition, the goal of our employment-related policies for FAP households is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training.

DEPARTMENT POLICY

Use this item to determine work-related activities and deferrals for FAP clients. Also use this item when FIP or RAP closes for any reason other than a penalty or disqualification.

The items listed below must be used when FIP or RAP closes due to noncompliance and a penalty or disqualification is imposed. If the noncompliant client:

- Received FIP and FAP on the date of noncompliance, see [BEM 233B](#).
- Received RAP and FAP on the date of noncompliance, see [BEM 233C](#).
- Did not receive FIP or RAP on the date of noncompliance, see [BEM 233B](#).

DEFERRALS

Clients meeting one of the criteria below are temporarily deferred from employment-related activities.

Age

Defer a person who is:

- Under age 16 or at least age 60; **or**
- A 16- or 17-year old who is **not** the grantee; **or**
- A grantee age 16 or 17 who
 - Lives with a parent or person in that role, **or**
 - Attends school at least **half time**, **or**

- Is enrolled in an employment/training program at least **half time**.

Care of a Child

Defer one person who personally provides care for a child under age 6 who is in the FAP group.

Care of Disabled Household Member

Defer one person who personally provides care for a disabled member of his/her own FAP group.

Disability

Defer persons incapacitated due to injury, physical illness or mental illness.

Education

A student enrolled at least **half time** in any recognized school, training program or institution of higher education meets the employment related activities requirement. This includes persons attending school for GED or adult high school completion.

Pregnancy

Defer pregnant women, beginning the **seventh** month of pregnancy **or** earlier if a pregnancy complication is medically documented.

Confirmation by an MD, DO, certified nurse-midwife, ob-gyn nurse practitioner or ob-gyn clinical nurse specialist which **must** include an expected date of delivery.

SSI/FAP Applicants

Defer applicants who apply for **both** SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time.

Substance Abuse Treatment Center Participant

Defer active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation. This does not include AA or NA group meetings.

Unemployment Compensation (UC) Applicant or Recipient

Defer an applicant for or recipient of unemployment compensation (UC). This includes a person whose UC application denial is being appealed. (PEM 230B)

In this case there are two separate requests for hearing which have a relationship, but arise out of two separate time frames. First is the request Claimant made when her benefits were going to be sanctioned. Claimant does not dispute that she failed to meet her participation requirements in the JET Program, did not provide any medical documentation to the JET Program regarding her asserted pregnancy problems, or that she did not participate in the triage meeting scheduled for March 25, 2010.

Claimant asserts she was not meeting her JET participation requirements because she had pregnancy problems. When specifically asked what the problems were, Claimant testified she had morning sickness, swollen feet, and swollen legs. The Department policy cited above requires that all claims of good cause must be verified and documented. Claimant has not presented any medical documentation showing she was unable to participate in the JET Program during February 2010. Claimant has not established good cause for her failure to participate in employment and/or self-sufficiency related activities during February 2010. No further analysis is required to decide the question of whether Claimant's Family Independence Program (FIP) case should be sanctioned.

The May 13, 2010 Notice of Case Action (DHS-1605) also states that Claimant's Food Assistance Program (FAP) case will be sanctioned due to her failure to participate in

employment and/or self-sufficiency related activities. When sanction of Claimant's Food Assistance Program (FAP) case was discussed the Department representative argued that Claimant had not requested a hearing about the FAP case. Claimant's hearing request dated June 11, 2010 states "I will like to file for a hearing concerning my jet program." This request includes all impacts from the non-compliance with JET and therefore includes any sanction of her FAP case. During the hearing it was determined that Claimant's benefit group consists of herself and one child under the age of 6. In accordance with PEM 230B, cited above, Claimant is deferred from employment related activities for Food Assistance Program (FAP) purposes. Claimant's FAP case should not be sanctioned.

During the hearing it was determined that after Claimant's Family Independence Program (FIP) case was sanctioned (closed) Claimant submitted an application for Family Independence Program (FIP) benefits. The June 23, 2010 Notice of Case Action (DHS-1605) gave Claimant notice that her application for Family Independence Program (FIP) benefits was denied because her FIP case was in sanction. Claimant submitted a request for hearing on the June 23, 2010 Notice of Case Action (DHS-1605) and it will be addressed in this Decision & Order. It has been decided that the sanction of Claimant's Family Independence Program (FIP) beginning June 1, 2010 was a correct action. It then follows that denial of Claimant's application for Family Independence Program (FIP) benefits was properly denied because her FIP case was in sanction.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly sanctioned Claimant's Family Independence Program (FIP) case, beginning June 1, 2010, for failure to participate in employment and/or self-sufficiency related activities.

It is also decided that the Department of Human Services properly denied Claimant's application for Family Independence Program (FIP) benefits made in June 2010, because her Family Independence Program (FIP) case was in sanction.

It is ORDERED that the actions of the Department of Human Services, regarding Claimant's Family Independence Program (FIP) in this matter, are UPHeld.

It is further decided that the Department of Human Services DID NOT properly sanction Claimant's Food Assistance Program (FAP) case for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, regarding Claimant's Food Assistance Program (FAP) in this matter, are REVERSED.

It is further ORDERED that any Food Assistance Program (FAP) benefits Claimant was otherwise eligible for, but did not receive, be supplemented.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

2010-41270/GFH

Date Signed: August 4, 2010

Date Mailed: August 12, 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.

GFH/alc

cc:

