

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: 2010-42878

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 10, 2010

Marquette 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 August 10, 2010. Claimant appeared and testified.

ISSUE

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?

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 was a mandatory participant in the Michigan Works Agency/Jobs Education and Training Program (JET).

(2) On March 26, 2010, Claimant requested that her newborn and the child's father, [REDACTED] be added to her Family Independence Program (FIP) case. They were added and [REDACTED] was referred to the Michigan Works Agency/Jobs Education and Training Program (JET)

(3) On March 30, 2010, Claimant was sent a Notice of Case Action (DHS-1605) stating both her newborn and [REDACTED] had been added and that her Food Assistance Program (FAP) benefits were increased.

(4) On April 12, 2010, [REDACTED] complete orientation at JET.

(5) On April 24, 2010, Claimant was sent a Notice of Case Action (DHS-1605) stating her Family Independence Program (FIP) benefits would increase.

(6) On April 27, 2010, the Michigan Works Agency/Jobs Education and Training Program (JET) requested a triage due to [REDACTED] failure to provide activity logs for the week of April 18, 2010, [REDACTED] was sent a Notice of Non-Compliance (DHS-2444). At the ensuing triage meeting the Department found there was no good cause for [REDACTED] failure to participate in employment and/or self-sufficiency related activities. [REDACTED] agreed to a compliance test but no First Non-Compliance Letter (DHS-754) was filled out or signed.

(7) On May 25, 2010, Claimant was sent a Notice of Case Action (DHS-1605) stating her Family Independence Program (FIP) case would be sanctioned.

(8) On May 26, 2010, the Michigan Works Agency/Jobs Education and Training Program (JET) requested a triage due to [REDACTED] failure to engage in any activity since May 4, 2010, [REDACTED] was sent a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting on June 1, 2010.

(9) On June 1, 2010, [REDACTED] did not participate in the triage meeting. Claimant

attended and [REDACTED] was telephoned but did not answer his phone. The Department determined there was no good cause for [REDACTED] failure to participate in employment and/or self-sufficiency related activities.

(10) On July 6, 2010, Claimant submitted a request for hearing.

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).

In this case it is undisputed that [REDACTED] was noncompliant with the JET program. Claimant asserted alternate arguments against her Family Independence Program (FIP) case being sanctioned. First she argued that [REDACTED] had left the household. When specifically asked Claimant testified that [REDACTED] was in the home when the first Notice of Non-Compliance (DHS-2444) came and that he left the state about a week before the second Notice of Non-Compliance (DHS-2444) came. Second she argued that she never requested to add [REDACTED] to her case and he was never really a member of her household. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

FIP GROUP COMPOSITION

DEPARTMENT PHILOSOPHY

The Department of Human Services (DHS) believes that children are best served by living in supportive family settings. The mutual responsibility of family members for each other and their commitment to caring for each other are key to building strong families. Parents are responsible for the care and support of their minor children. In the absence of parents, children may be cared for by other adults having specific relationships to the children. Spouses are responsible for each other. All needy family members living together are expected to share income, assets, and expenses.

DEPARTMENT POLICY FIP

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group (EDG) and the FIP certified group. To be eligible for FIP, a child must live with a legal parent, stepparent or other qualifying caretaker.

DEFINITIONS

Caretaker

A **caretaker** is a legal parent or stepparent living in the home, or when no legal parent or stepparent lives in the home, another adult who acts as a parent to a dependent child by providing physical care and supervision. See [Who May Be a FIP Caretaker?](#), later in this item.

Certified Group

The certified group means those individuals in the FIP EDG who meet all non-financial FIP eligibility factors. Countable income and assets of certified group members are considered in determining FIP eligibility. Certified group members have a FIP EDG participation status of **Eligible Child** or **Eligible Adult**.

Note: The FIP payment standard is based on the FIP certified group size.

Dependent Child

A **dependent child** is an unemancipated child who lives with a caretaker and is one of the following:

- Under age 18.
- Age 18 or 19 and a full-time high school student expected to graduate before age 20. See [BEM 245](#), for definition of high school.

Note: See definition of [Emancipated](#), later in this item.

Eligibility Determination Group

The eligibility determination group, (EDG) means those individuals living together whose information is needed to determine FIP eligibility. Based on data entry, an individual rules programmed into the system, Bridges assigns an EDG participation status to each member of the household.

EDG Participation Status

The FIP EDG participation status explains the role the individual plays in the FIP eligibility determination. Individuals having a FIP EDG participation status other than **Excluded Adult** or **Excluded Child**, are included in the FIP EDG. The countable income and assets of individuals having an **eligible** or **disqualified** FIP EDG participation status are considered in determining FIP eligibility.

Emancipated

A child is **emancipated** if any of the following:

- Ever validly married.
- Emancipated by court order.
- On active duty with the armed forces of the United States.

Joint Physical Custody

Joint physical custody occurs when parents or other caretakers alternate taking responsibility for the child's day-to-day care and supervision in separate homes. It may be included in a court order or may be an informal arrangement between parents or other caretakers.

Living Together

Living together means sharing a home where family members usually sleep except for temporary absences.

Primary Caretaker

The **Primary Caretaker** is the care taker who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made.

Absent Caretaker

Once a caretaker is determined to be the Primary Caretaker, the child's other caretakers are considered **Absent Caretakers**.

Temporary Absence

A temporarily absent person is considered to be living in the home when **all** of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP EDG before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less. (BEM 210)

FAILURE TO MEET EMPLOYMENT AND/OR SELFSUFFICIENCY-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.

PROCESSING THE FIP CLOSURE

Follow the procedures outlined below for processing the FIP closure:

- Send a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance, within three days after learning of the noncompliance. You must include the following information on the DHS-2444:
 - The date(s) of the noncompliance.
 - The reason the client was determined to be noncompliant.
 - The penalty that will be imposed.
 - Schedule a triage to be held within the negative action period.
- Determine good cause during triage and prior to the negative action effective date. Good cause must be verified

and can be based on information already on file with the DHS or the JET program.

Document the good cause determination on the sanction detail screen.

First Case Noncompliance Without Loss of Benefits

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is *No Good Cause*, do the following:

1. Discuss and provide a DHS -754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.
2. Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period.
3. Advise the client that the instance of noncompliance will remain on record even if the client complies. The noncompliance will be excused, but not erased and could result in longer sanctions if the client is noncompliant in the future.
4. If the client **accepts** the offer to comply and agrees with the department's decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754.
5. When a phone triage is conducted for a first noncompliance and the client agrees to comply, complete the DHS-754 as you would complete for an in-person triage meeting. When completing the form 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 and the JET case manager was not included in the phone triage.
6. Enter the outcome of the *Excuse Offer* in Bridges.

7. When the client verifies compliance before the *Excuse Offer* due date and is meeting the assigned activity that corrects the noncompliance, reinstate the case with no loss of benefits.

Note: Verification of completion of a compliance activity may include a signed copy of the DHS-754 or any collateral contact with JET or other service provider.

8. If the client **does not accept** the offer to comply, document the decision in Bridges
9. If the client **disagrees** with the department's decision of noncompliance without good cause, use the second check box on the DHS-754 that advises the client not to sign the form. Assist the client with filing a hearing request and advise them that if they lose the hearing, they will receive a new notice of noncompliance and a new meeting date and they have the right to agree to activities outlined on the DHS-754 and avoid the financial penalty at that time, unless another group member uses the family's first excuse before the hearing issue is settled.
10. Send a new DHS-2444 with an appointment date and time. The client must attend the triage and comply with assigned activities before the 754 due date.
11. You must enter all triage results at one time in Bridges. If the client fails to meet or contact the FIS or fails to provide verification of compliance without good cause, the three-month sanction applies. This policy only applies for the first case of noncompliance on or after April 1, 2007. It is only offered one time for each case for the first noncompliant member on that case when there is no good cause.

Noncompliant Member Leaves The Home

If the noncompliant member LEAVES the home PRIOR to issuing a DHS-2444, Notice of Noncompliance, do not act on the closure. If the noncompliant member joins a new group in this instance, the penalty would apply to the new group. Continue to process the good cause determination and noncompliance for the new group.

If the noncompliant member LEAVES the home AFTER a DHS-2444, Notice of Noncompliance is sent or the FIP closure has taken effect, continue to impose the sanction for the remainder of the sanction period on the original FIP group. The noncompliant member takes their individual penalty counter with them to the new group and reduces the case penalty counter of the original group. If the noncompliant member RETURNS to the home AFTER the FIP closure, follow procedures in [Reapplication and Reinstatement](#) below.

Exception: If a FIP case is closed due to noncompliance and subsequently a new caretaker applies for FIP for the children of a sanctioned case, determine FIP eligibility for the new group. You cannot transfer grantees on a case after a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance is issued. Verify absence of the noncompliant person if it is questionable. (BEM 233A)

The facts in this case show that [REDACTED] was a member of the household and was still in the household when the April 27, 2010 Notice of Non-Compliance (DHS-2444) was sent. In accordance with the policy cited above, the sanction should be applied.

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 sanction Claimant's Family Independence Program (FIP) 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, in this matter, are UPHELD.

/s/

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

Date Signed: August 17, 2010

Date Mailed: August 20, 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:

[REDACTED]