

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-44541
Issue No: 1038:1012
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 2010
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 June 16, 2010. After due notice, an in-person hearing was held on September 16, 2010. The Claimant attended the hearing and was represented by her [REDACTED]

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. On November 10, 2009, Claimant filed an application for FIP benefits.
2. Claimant alleged that she needed a deferral for disability and her medical packet was sent to the Medical Review Team.
3. On March 22, 2010, the Medical Review Team denied claimant's alleged disability and determined that claimant was not disabled and was work ready with limitations. (Exhibit #390-391)
4. On March 29, 2010, the department caseworker sent claimant a JET appointment notice, indicating that claimant had an appointment to attend JET orientation on April 12, 2010, at 9:00 a.m. (Exhibit #393)

5. Claimant did not attend JET/Work First on April 12, 2010.
6. On May 4, 2010, a Notice of Non-compliance was sent to claimant with an appointment date scheduled for May 17, 2010. (Exhibit #394)
7. On May 17, 2010, a good cause determination was conducted via telephone with client. The caseworker did not find good cause for failure to attend JET/Work first. Client agreed to attend the compliance test which was to be given on May 24, 2010. (Exhibit #396)
8. A First Noncompliance Letter was sent to claimant outlining penalties for failure to attend work first/JET activities and an appointment was scheduled for May 24, 2010, for claimant to attend Work first/JET or the penalty would be enforced. (Exhibit #395)
9. On May 24, 2010, claimant failed to attend Work First/JET.
10. On June 9, 2010, the department caseworker sent claimant notice that her FIP case would be sanctioned from July 1-September 30, 2010, for failure to attend Work First/JET.
11. On June 16, 2010, claimant filed a request for a hearing to contest the department's negative action.

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 (RTM), 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's representative argued that the Claimant is not employable and that she had good cause for her noncompliance with the JET program. The Claimant's representative offered documentation that the Claimant's physician found her to be totally disabled.

The Department representative testified that the Claimant did not show up for her JET program orientation and did not attempt to reschedule it. No evidence was available at the hearing that the Claimant requested any reasonable accommodations to assist with her participation in the JET program.

The Claimant's representative disputed the determination that the Claimant is not disabled. Numerous medical documents were presented at the hearing that described the diagnosis and treatment plans of the Claimant's medical providers.

A FIP recipient who has been determined to be work ready with limitations must be referred to the JET program. BEM 230A. The Department must provide FIP recipients with reasonable accommodations to assist with participation in the JET program upon request consistent with the American's with Disabilities Act. BEM 230A.

Since the Claimant was determined to be work eligible with limitations by the Medical Review Team, the Department's referral to the JET program was in accordance with

policy. The Department's determination that the Claimant did not have good cause for her noncompliance with the JET program is reasonable, and that the Department acted in accordance with policy when it terminated the Claimant's FIP benefits.

It should be noted for the record that claimant was able to attend the hearing without accommodation. She certainly could have attended the Orientation appointments at which time work accommodations may have been provided, depending upon her circumstances. Claimant did not even attend the JET orientation so that the Department could make the assessment. Claimant testified at the hearing that she has four children for whom she has sole custody. If claimant is allegedly too disabled to even attend JET orientation, this raises some questions as to whether or not claimant is actually able to care for her children appropriately and adequately and the department should take steps to make the appropriate determination.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy when it sanctioned the Claimant's FIP benefits for noncompliance with the JET program.

Accordingly, the Department's decision is AFFIRMED.

_____/s/

Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 11, 2010

Date Mailed: October 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.

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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.

LYL/alc

Cc:

