

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

IN THE MATTER OF: Reg.

[REDACTED]

No: 2010-51849
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 27, 2010
Tuscola County DHS

ADMINISTRATIVE LAW JUDGE: **Suzanne L. Morris**

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 October 7, 2010. The claimant appeared and provided testimony, along with her [REDACTED] [REDACTED]

ISSUE

Did the department properly terminate and sanction the claimant's Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements?

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 had been deferred from WF/JET participation.
2. On May 11, 2010, the department mailed the claimant a new Medical Needs form (DHS-54A) to be completed and returned to the department. (Department Exhibit 21 – 23)
3. When no documentation supporting a deferral was submitted to the department, the claimant was mailed a WF/JET Appointment Notice

- (DHS-4785), scheduling the claimant to attend orientation on June 8, 2010. (Department Exhibit 19)
4. The claimant did not attend the orientation. (Department Exhibit 18)
 5. On June 24, 2010, the claimant was mailed a Verification Checklist (DHS-3503), requiring the claimant to attend an appointment on July 1, 2010 to discuss the missed appointment. (Department Exhibit 16 – 17)
 6. The claimant called and indicated that she could not make the appointment, so the department rescheduled the appointment as a telephone meeting. (Department Exhibit 15)
 7. On July 1, 2010, the department called the claimant at the telephone number provided (her mother's telephone number). No one answered and the department staff member left the claimant a message to call her case worker. (Department Exhibit 13)
 8. On July 15, 2010, the department called the claimant at her mother's number again and left a message to call her case worker to reschedule the appointment. (Department Exhibit 12)
 9. On July 30, 2010, the claimant called and informed the department that she would have the medical documentation submitted by August 4, 2010. (Department Exhibit 11)
 10. On August 4, 2010, the claimant indicated that she had faxed the paperwork to the doctor and would pick it up from his office and submit it to the department by August 6, 2010. (Department Exhibit 11)
 11. When no documentation was received, the department mailed the claimant a Notice of Case Action (DHS -1605) that indicated the claimant's FIP case would close effective September 1, 2010 due to the noncompliance. (Department Exhibit 4 – 7)
 12. The claimant submitted a hearing request on August 25, 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 Program Reference Manual (PRM).

Department policy indicates:

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.

Care of a Spouse or Child with Disabilities

A caretaker who provides care for a spouse or child with disabilities living in the home when the child does not attend school full time is not a WEI and is not referred to JET if:

- . The need for supervised, in-home care by the caretaker is verified by a doctor’s statement, using a DHS-54A, Medical Needs form, that must include the need for supervision, the condition of the spouse/child with disabilities, and to what extent care is needed;
- . The individual with disabilities lives with the caretaker;
- . The child with disabilities is not enrolled in school full-time as defined by the institution; **and**
- . The individual with disabilities:

- .. Is a recipient of SSI/RSDI due to disability or blindness; **or**
- .. A doctor verifies in writing using a DHS-54A, Medical Needs form, the need for supervised, in-home care by the caretaker. BEM 230A, p. 10.

Verification Requirements

Care of a spouse or child with disabilities.

- . Verify the individual's disability;
- . Verify the need for supervised, in-home care by the caretaker, using a DHS-54A, Medical Needs form;
- . Verify school enrollment using a DHS-3380, School Enrollment form, if the capacity for school participation is not obvious or if the information is questionable. Non-enrollment cannot be verified by individual schools; send the DHS-3380 to the intermediate school district covering the county of the client's residence. You must document the school enrollment determination in the case record.
- . See "Care of Other Children with Disabilities" under deferrals when all of the criteria identified under "Care of a Spouse/Child with Disabilities" has been met, except that the child is in school full-time and the caretaker of the child with disabilities indicates they are needed in the home, even if the child is in school full-time. BEM 230A, p. 11.

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 needed to provide documentation of the need for a deferral by submitting appropriate documentation from her son's physician. The department mailed the claimant the Medical Needs form (DHS-54A) on May 11, 2010. The claimant was to have this form completed by the physician and returned to the department.

The claimant did not return documentation to establish a deferral. Therefore, the claimant was sent a WF/JET Appointment Notice to attend orientation with WF/JET on

June 8, 2010. The claimant did not attend the orientation, which is noncompliance with WF/JET program requirements.

A claimant's noncompliance can be excused if the claimant has a documented 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 gave the Medical Needs form to the physician's office and that they failed to fax it to the department until after the case closed. However, the claimant's case did not close until September, 2010. The form had been provided to the claimant on May 11, 2010. This gave the claimant over three months to get the form completed and returned and the claimant failed to do so.

The form was not received by the department until September 21, 2010, after the FIP case had closed. The physician completed and signed the form on September 14, 2010. This is over four months from when the claimant received the form. The claimant did not call the department and report that she was having difficulties in having the doctor complete the form. In fact, the claimant called the department three times (May 25, 2010; July 30, 2010; and August 4, 2010) and indicated that they would have the Medical Needs form to the department within days. Not once did the claimant indicate there were any problems in providing the form. Thus, this Administrative Law Judge finds that the department gave the claimant ample time to have the form completed and returned and that the claimant simply failed to do so.

Therefore, the claimant is not found to have good cause for her noncompliance. The department acted in accordance with department policy when they closed her FIP case and sanctioned it for the WF/JET noncompliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly terminated and sanctioned the claimant's Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements.

Accordingly, the department's decision is UPHeld. SO ORDERED.

Suzanne

/s/
L. Morris
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 14, 2010

Date Mailed: December 14, 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.

SM/alc

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