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: 2010-7265
Issue No: 1038
Case No: [redacted]
Load No:
Hearing Date:
March 3, 2010
Lenawee County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 March 3, 2010. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine the claimant's Family Independence Program (FIP) case should be closed for Work First/Jobs, Education and Training (WF/JET) program noncompliance in November, 2009?

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 was a mandatory WF/JET program participant.

2. The claimant was assigned to triage status on October 6, 2009 for failing to turn in job search logs since September 14, 2009. (Department Exhibit 6).

3. The claimant attended a triage appointment on October 28, 2009. At the triage appointment, the claimant stated her children had been sick, but did not provide any doctor's slips to show evidence of her failure to participate. No good cause was found for the noncompliance and the claimant agreed to sign the First Noncompliance Letter (DHS-754) to allow her to continue participation without any penalty or sanction. (Department Exhibit 2, 3).

4. On November 3, 2009, WF/JET emailed the department worker to inform her that the claimant had not completed her 20 hours of job searching by November 2, 2009, which violated the terms of the First Noncompliance Letter. (Department Exhibit 1).

5. The department determined the claimant's case should close for a second instance of noncompliance. (Department Exhibit 4).

6. The claimant submitted a hearing request on November 4, 2009.

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 Bridges Reference Manual (BRM).

Department policy states:

> **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 ACTIVIE 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.

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 does not dispute that she was noncompliant with WF/JET program requirements. The

claimant admits that she was placed on a compliance test for an instance of noncompliance and admits that she did not get all of her required 20 hours completed for the compliance test.

The claimant indicates that she believes she had good cause for her noncompliance. 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 her children were sick and that she could not get in her required amount hours to complete the compliance test. Department policy indicates that an immediate family member's illness or injury that requires in-home care by the client is considered good cause. BEM 233A.

The claimant submitted a copy of doctor's notes from [redacted] when she submitted her hearing request that showed her children were seen at the doctor's office on October 23 and October 29, 2009 for flu-like symptoms. (See Claimant's Exhibits B – D). The claimant also presented an email to Judy Wesson at WF/JET that acknowledges the claimant talked to the WF/JET worker about her children being ill. (See Claimant's Exhibit A).

Further, it is also noted that the claimant was only given from October 29 to November 2, 2009 to complete the compliance test. The claimant's WF/JET responsibilities were to submit 20 hours of job searches each week, as the claimant is a single mother with a child under the age of six. It does not seem reasonable for the department to only give the claimant only five days (including weekend days when some businesses may not be open) to complete the compliance test. If the claimant is responsible for 20 hours each week, the 20 hours of a compliance test should also include a week's period of time.

In addition, it is clear that the claimant did speak to someone at WF/JET about her children being ill. No one from WF/JET was present at the hearing to explain the email or any

instructions the claimant was given. Therefore, the claimant's testimony is found credible, given the WF/JET worker acknowledges talking to the claimant about her unavailability due to her children's illness. These factors combined point to the conclusion that the claimant was not given a fair opportunity to get the compliance test done.

Thus, this Administrative Law Judge finds that the claimant should be given a second chance to complete the compliance test and continue her participation with WF/JET.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined the claimant was noncompliant with WF/JET program requirements without good cause and improperly determined her FIP case should be terminated.

Accordingly, the department's actions are REVERSED. The department shall:

1. Reinstate the claimant's FIP case back to the date of closure and issue the claimant any retroactive FIP benefits she is entitled to receive.

2. Initiate another compliance test for the claimant, allowing her to continue in WF/JET as long as she completes the compliance test satisfactorily.

SO ORDERED.

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

Date Signed: March 24, 2010

Date Mailed: April 6, 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.

SLK[redacted]

cc: [redacted]