

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: 2010-13229
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 17, 2010
Barry 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 February 17, 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 had been deferred from WF/JET participation due to medical issues, but the medical certification from her physician had ended. (Department Exhibit 43B).

2. The claimant was mailed a Medical Determination Verification Checklist (DHS-3503-MRT) on August 20, 2009 that indicated she must return current medical records to the department to allow the Medical Review Team (MRT) to review her for any WF/JET deferral. The medical records were due by August 31, 2009 or the claimant was informed she would have to attend WF/JET. (Department Exhibit 9, 46B).

3. The claimant did not submit the medical records to the department until November 24, 2009, after the case closure. (Department Exhibit 47B – 52B).

4. The claimant attended WF/JET orientation on October 5, 2009. The claimant indicated that she understood she was to complete 20 hours of job searching each week. (Department Exhibit 20, 39B).

5. A triage appointment was requested by WF/JET on October 22, 2009 for falsification of job logs. (Department Exhibit 19 – 20, 1B).

6. A Notice of WF/JET Noncompliance (DHS-2444) was mailed to the claimant on November 3, 2009, scheduling a triage appointment for November 13, 2009. (Department Exhibit 7, 18).

7. The claimant attended the triage appointment and admitted that she had falsified job logs. The claimant indicated that she didn't have a ride to job search, but the department had given her bus tokens. The claimant agreed to perform a compliance test and sign the First Noncompliance Letter (DHS-754) to avoid being sanctioned. The compliance test required her to complete 20 hours of job searching by November 23, 2009. (Department Exhibit 10, 16 – 17).

8. The department indicates that the claimant did apply at five different employers, but the claimant did not provide any confirmation of on-line applications. The department indicated that she did not meet the terms of the compliance test. (Department Exhibit 10, 15A).

9. A Notice of Case Action (DHS-1605) was mailed to the claimant on November 24, 2009, indicating that her FIP would be closing due to noncompliance.

(Department Exhibit 3- 6)

10. The claimant submitted a hearing request on December 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 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.

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 initially noncompliant with WF/JET program requirements. The claimant admits that she was placed on a compliance test for falsifying job logs and was required to complete 20 hours of job searching by November 23, 2009.

The claimant did turn in job leads sheets with five in-person applications that were substantiated by the department. The claimant was given credit for 10 hours of job searching. The other documentation that the claimant submitted for online applications could not be substantiated. The claimant submitted seven pages of internet printouts from jobs.com, but there is no specific job shown that the claimant applied for. The claimant submitted a page from Jobs Online indicating she submitted a resume, but the page clearly states “[w]e’re sorry. We could not find any jobs that match ‘Customer Service’ in the location you entered.” Thus, it is clear that the claimant could not submit a resume when no positions were available. The claimant

submitted a page from EmploymentGuide.com that indicates she turned in a resume to [REDACTED]. However, the printed page again clearly states “[w]e are sorry. At this moment there are no matching jobs in your immediate area that match your criteria.” Again, it is clear that the claimant could not have submitted an application. The claimant also submitted a page from Jobs Radar.com that indicates a position available with [REDACTED]. However, it is just the job description and does not show that the submitted an application/resume for the position.

Therefore, this Administrative Law Judge does find that the department properly determined the claimant did not complete the terms of her compliance agreement. The department could only substantiate 10 hours of the required 20 hour compliance test. Thus, the claimant did not complete the compliance test as required.

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. In this case, the claimant does not indicate any good cause reasons. It is noted that the claimant was supposed to be submitted her medical records to the department to allow the MRT to determine if the claimant would be eligible for a deferral. However, even though the claimant was mailed the required forms with a Verification Checklist on August 20, 2009, the forms were not completed and returned to the department until November 24, 2009, after the triage process was already held. Thus, this Administrative Law Judge does not find that the claimant’s medical condition was such that it would equate to good cause, and certainly not for falsifying job search logs.

It is noted that the claimant submitted a hearing request on the Food Assistance Program (FAP) in addition to the FIP issue. However, there was no negative action associated with the FAP benefits and therefore, no FAP hearing issue.

DECISION AND ORDER

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

Accordingly, the department's actions are UPHeld. SO ORDERED.

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

Date Signed: April 21, 2010

Date Mailed: April 22, 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]