

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: 2010-14457
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2010
Kalamazoo 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 April 14, 2010. The claimant personally appeared and provided testimony, along with [REDACTED], a friend.

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 September, 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 participating in WF/JET in Calhoun County. A triage was requested by WF/JET on August 26, 2010, but Calhoun County requested Kalamazoo hold the triage appointment because she was transferring to Kalamazoo County. (Department Exhibit 6)
2. The claimant was mailed a Notice of Noncompliance (DHS-2444) on September 9, 2009, scheduling a triage appointment for September 15, 2009. (Department Exhibit 4 – 5)
3. The claimant did not attend the triage appointment. The department determined the claimant did not have good cause. (Department Exhibit 9)
4. On September 22, 2009, the claimant was mailed a Notice of Case Action (DHS-1605) that indicated that her FIP benefits were going to close for one year due to WF/JET noncompliance. (Department Exhibit 11 – 14)
5. The claimant submitted a hearing request on December 15, 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. The department indicates that the claimant did not participate with WF/JET for the required amount of hours.

The actual noncompliance is alleged to have occurred in Calhoun County. Calhoun County requested the triage appointment, but the triage was conducted in Kalamazoo County, as the claimant had moved to a homeless shelter in Kalamazoo. The department points out that the claimant was a no call/no show for the triage appointment and the department determined she had no good cause and pended her case for closure for one year, as this was her third instance of noncompliance.

The claimant testified that she moved from Calhoun County because she was having problems with domestic violence. The claimant testified that she was hospitalized twice in Calhoun County with injuries that resulted from domestic violence issues. The claimant testified that she had reported the domestic violence issues to her worker at Calhoun County. The claimant further testified that she was pregnant, with a due date of October 15, 2009, with a C-Section scheduled. However, the claimant went into labor early with pregnancy complications and had her baby on September 11, 2009. The claimant testified that she was in the hospital with her baby until September 18, 2009, when both mother and baby were released.

The claimant was then hospitalized during the triage appointment (September 15, 2009). Clearly, the claimant was not capable of attending the triage appointment to present her good cause reasons.

The department argues that its decision to close the claimant's case for one year is supported because they didn't know she was pregnant or had been a victim of domestic violence, and didn't know she was homeless. However, there is a case note in the file that indicates the claimant moved to the [REDACTED] dated August 26, 2009. The department presented this information to this Administrative Law Judge, so they clearly were aware that she was staying in a shelter. The claimant testified that she moved to the shelter on August 4, 2009,

which is the first week that Calhoun County indicates she was noncompliant with WF/JET requirements.

Further, it is impossible to believe that Calhoun County was not aware she was pregnant as she would have been seven months pregnant when she was participating with WF/JET. Thus, the claimant should not be penalized for information that Calhoun County never presented to Kalamazoo County. If Calhoun County declines to do the triage, information regarding the claimant's case and any potential good cause factors should certainly be forwarded to the county that is going to conduct the triage. The claimant should not be penalized due to the department's failure to provide relevant information.

It seems clear to this Administrative Law Judge that the claimant was going through several issues that could have formed the basis for a deferral from WF/JET participation or good cause for noncompliance. These issues were never considered by Kalamazoo County when they conducted the triage appointment. This is particularly troubling when the claimant is looking at a possible one-year penalty for this alleged noncompliance. This is a serious sanction and requires the department to have all of the relevant information to consider.

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 testified that she was homeless, pregnant and had experienced several incidents of domestic violence, which caused her to leave Calhoun County and move to a homeless shelter in Kalamazoo County. Department policy indicates that persons experiencing a temporary critical event can be considered for a temporary deferral. BEM 230A. Specifically listed are pregnancy complications, homelessness and domestic

violence. BEM 230A. It appears that no staff member considered the claimant for any deferral based on the issues she was experiencing.

Department policy requires the department to determine good cause for a noncompliance, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A. In this case, this Administrative Law Judge finds multiple areas of good cause for the claimant's noncompliance. Therefore, this Administrative Law Judge finds that the claimant's noncompliance is excused due to good cause and the claimant should be re-engaged with WF/JET without any penalty.

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. Re-instate the claimant's FIP benefits back to the date of closure and issue the claimant any retroactive FIP benefits that she is entitled to receive.
2. Re-engage the claimant with WF/JET.

SO ORDERED.

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

2010-14457/SLK

Date Signed: April 26, 2010

Date Mailed: May 3, 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]