

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: 2010-19044
Issue No: 1038; 6019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 18, 2010
Kent 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 May 18, 2010. The claimant personally appeared and provided testimony, along with her fiancée, [REDACTED]

ISSUES

1. 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?
2. Did the department properly close the claimant's Child Development and Care (CDC) case 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 placed in triage status for failing to attend appointments, failing to turn in job searches for two weeks, failing to provide pay stubs for her employment, and falsifying work hours and GED attendance. (Department Exhibit 3, 5)

2. The claimant participated in the triage appointment by telephone on October 30, 2009. The claimant was not given good cause and she signed a First Noncompliance Letter (DHS-754) on November 1, 2009. The claimant agreed to perform 40 hours of WF/JET participation from November 2, 2009 through November 10, 2009. (Department Exhibit 2- 3, 6, 7)

3. The claimant met with the Case Manager on November 2, 2009. The claimant was told to turn in her job searches daily (on Wednesday, the claimant was allowed to fax in the job searches as she had classes) and to attend every appointment. (Department Exhibit 2)

4. The claimant did not attend the required appointment on November 9, 2009 (the Monday her compliance test was due). The claimant only turned in 16 hours of job searches for November 2 and November 3, 2009 and both were date-stamped on November 3, 2009. The claimant also did not sign in on November 3, 2009. As of November 9, 2009, WF/JET had received no call or additional information from the claimant. (Department Exhibit 2)

5. The claimant turned in job searches for November 4 through November 6, 2009 on November 10, 2009, which was again not turned in daily as she was required. (Department Exhibit 1)

6. The claimant did not meet the terms of the First Noncompliance Letter, or compliance test, and was terminated from WF/JET. The claimant's CDC was terminated as

there was no need for CDC services if the claimant was not attending WF/JET.

(Department Exhibit 1)

7. The claimant submitted a hearing request on November 17, 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).

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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.

CHILD DEVELOPMENT AND CARE (CDC)

Eligibility for Child Development and Care services exists when the Department has established **all** of the following:

- . There is a **signed application** requesting CDC services, **and**

- . each parent/substitute parent (see Parent/Substitute Parent section in this item) is a member of a valid **ELIGIBILITY GROUP, and**
- . each parent/substitute parent (P/SP) meets the **NEED (Reason)** criteria as outlined in this item, **and**
- . an eligible provider is providing the care, **and**
- . all eligibility requirements are met. PEM, Item 703, p. 1

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 40 hours completed for the compliance test.

The claimant did not turn in her job search logs daily as she was required to do. The claimant submitted job searches for November 2 and November 3, 2009, but both sheets were submitted on November 3, 2009. Further, the claimant did not fax her job searches to WF/JET on Wednesday, November 4, 2009, as she was required to do (due to her school schedule). The claimant submitted job searches for November 4 through November 6, 2009 on November 10, 2009. However, the claimant missed her appointment on November 9, 2009 that she was required to attend.

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 she was sick and had physician's slips to cover the time missed. The claimant testified that she faxed the doctor slips to her WF/JET site. However, the claimant presents no fax confirmation to confirm this. Further, the WF/JET site provided their notes and, despite the notes being quite detailed, there is no indication that the site ever received any doctor's slips from the claimant. In fact, a case note on November 9, 2009, indicates that no contact with the claimant had occurred. More importantly, this was noted by the person the claimant indicates she faxed her doctor's slips to.

The claimant presents this Administrative Law Judge with three different documents. The first is medication dosing instructions from the emergency room dated November 3, 2009. The second is an emergency room slip that indicates "[p]lease excuse from school today." The third slip is a JET Medical Release Form that is dated November 3, 2009 and states that the claimant is unable to work from November 3, 2009 through November 5, 2009.

However, this slip appears very questionable as the signature is for the same doctor that wrote out the second note (excusing the claimant for only November 3, 2009). Further, a look at the signatures on both of these forms shows that the JET Medical Release Form appears to be forged. The signature is not fluent like the one on the second form. It is also much darker and thicker, as though it were traced. There are also line breaks that seem to show the pen being lifted and placed back down, which is not the case with the second slip. Further, it would make no sense for the same doctor to write two slips in one day, one excusing the claimant for only one day and one excusing her for three days. Therefore, this Administrative Law Judge finds that the authentic slip is the one that excused the claimant for only one day, November 3, 2009.

It is clear that the claimant did not meet the terms of the First Noncompliance Letter. Even prior to any purported physician's slip, the claimant had already failed the compliance test,

by not turning in her job searches daily. Further, since the claimant appears to have falsified a doctor's slip for November 4 and 5, 2009, this again shows that no good cause should be granted for the claimant's noncompliance.

Once the claimant was exited from WF/JET, she was no longer entitled to CDC services. Department policy indicates that to be eligible for CDC services, a claimant must meet the need criteria. BEM 703. Once the claimant was no longer participating with WF/JET, she no longer met the need requirement. Thus, the department properly determined her CDC benefits should be terminated.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that

1. 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.
2. The department properly determined the claimant's CDC benefits should be terminated as the claimant no longer met the need requirement for the services.

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: June 14, 2010

Date Mailed: June 16, 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 

cc: 