

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: 2010-23865

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 11, 2010

Monroe County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 11, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly sanction Claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Claimant was an ongoing recipient of Family Independence Program (FIP) benefits. Claimant was assigned to the Michigan Works Agency/Jobs Education and Training Program (JET) and required to participate 20 hours per week.

(2) On October 30, 2009, Claimant had appointments with Michigan Rehabilitative Services (MRS) for orientation but she did not follow up and get evaluated for a plan with MRS.

(3) On December 11, 2009, Claimant began a community service assignment and was to perform 20 hours per week of community service.

(4) For the week beginning December 14, 2009, Claimant submitted verification of 11.25 hours.

(5) For the week beginning December 21, 2009, Claimant submitted verification of 20 minutes.

(6) For the week beginning December 28, 2009, Claimant submitted verification of 6.5 hours.

(7) On January 5, 2010, Claimant was referred for triage.

(8) On January 6, 2010, Claimant was sent a Notice of Non-Compliance (DHS-2444).

(9) On January 19, 2010, Claimant participated in a triage meeting. Claimant submitted a Verification of Vocational Rehabilitation Status Form (DHS-4698) which was signed and stated Claimant had an application pending with MRS, working on a plan. Claimant was given a blank Verification of Vocational Rehabilitation Status Form (DHS-4698).

(10) On January 21, 2010, Claimant submitted a Verification of Vocational Rehabilitation Status Form (DHS-4698) which stated she had an active case with MRS.

(11) On January 22, 2010 Claimant was sent a Notice of Case Action (DHS-1605) stating her Family Independence Program (FIP) and Food Assistance Program (FAP) cases would be sanctioned for failure to participate in employment and/or self-sufficiency related activities.

(12) On February 8, 2010, Claimant submitted a request for hearing.

## 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 (formerly known as the Family Independence Agency) 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 provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

### **EMPLOYMENT AND/OR SELF-SUFFICIENCY RELATED ACTIVITIES: FIP/RAP CASH**

#### **DEPARTMENT PHILOSOPHY**

##### **FIP, RAP Cash**

The Family Independence Program (FIP) and Refugee Assistance Program (RAP) are temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP and RAP engage in employment and self-sufficiency related activities so they can become self-supporting.

#### **DEPARTMENT POLICY**

##### **FIP, RAP Cash**

Federal and state laws require each work eligible individual (WEI) in the FIP and RAP group to participate in Jobs, Education and Training (JET) Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements.

These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. Apply FIP policy to RAP cash clients unless a separate RAP cash policy is mentioned in PEM 233C.

### **MANDATORY PARTICIPATION IN EMPLOYMENT SERVICES**

All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. WEIs who are temporarily deferred are required to participate in activities that will help them overcome barriers and prepare them for employment or referral to an employment service provider.

### **PARTICIPANTS DELAYED**

#### **REFERRAL TO EMPLOYMENT SERVICES**

WEIs meeting one of the following criteria are only temporarily not referred to an employment service provider because they may continue to count in the state's federal work participation rate. They are required to participate in activities that will increase their full potential, help them overcome barriers and prepare them for employment or referral to an employment services provider as soon as possible.

If the WEI refuses or fails to provide verification of a deferral when required, refer him/her to JET.

Notify the MWA/JET service provider immediately by phone or email when a client who was previously referred is granted a temporary deferral. Information entered in the data collection will create the following participation/deferral reasons.

#### **MRS Clients**

#### **Clients Referred by DHS**

In cases where FIP clients are receiving services from Michigan Rehabilitation Services (MRS), FIP defers to the MRS plan for the clients, and fully counts the individuals as engaged in work activities if they are meeting their MRS work plan. Clients with disabilities must be afforded the same program benefits as all clients, and this includes the right to participate in program activities. Equal recognition of their participation, regardless of the disability, is a consideration of their right to equal program benefits.

Refer to **Deferral for Long Term Incapacity** later in this item when clients claim they are unable to work due to a medical condition lasting longer than 90 days and to **Deferral for Short Term Incapacity** when a client claims they are unable to work due to a condition lasting less than 90 days.

### **Clients Referred by MWA**

The MWA may refer a client to MRS for services to remove a barrier or enhance a work skill. A client referred to MRS by the MWA may be assigned additional activities through the MWA. When a client is referred to MRS by MWA, the MWA remains the monitoring agency. Clients served by MRS will be required to participate in all activities assigned by both MWA and MRS. (BEM 230A)

## **FAILURE TO MEET EMPLOYMENT AND/OR SELFSUFFICIENCY- RELATED REQUIREMENTS: FIP**

### **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**

All Work Eligible Individual (WEI) and adult non-WEIs (except ineligible grantees, clients deferred for lack of child care (DC) and disqualified aliens), see [BEM 228](#), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

Depending on the case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).
- Case closure for a minimum of three or 12 months.

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](#).

## **NONCOMPLIANCE**

### **WITH EMPLOYMENT AND/OR SELSUFFICIENCYRELATED 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:

**Exception:** Do not apply the three or 12 month penalty to ineligible caretakers, clients deferred for lack of child care (DC) and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification.

Clients can reapply at any time.

- 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.

**Note:** FIS should clear the FAST Fall Out Report and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST non-completion.

- Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).

**Note:** FIS must have scheduled a FSSP completion appointment with the client and the client failed to attend before considering a client noncompliant for FSSP non-completion.

- Comply with activities assigned to on the Family Self Sufficiency Plan (FSSP) or PRPFC.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting.
- 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.

### **Refusing Suitable Employment.**

Refusing suitable employment means doing **any** of the following:

- Voluntarily reducing hours or otherwise reducing earnings.
- Quitting a job (see exception below).

**Exception:** This does NOT apply if:

- The MWA verifies that the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.
- A teen parent or dependent child quits a seasonal job to return to a high school or GED program.
- Firing for misconduct or absenteeism (not for incompetence).

**Note:** Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

- Refusing a bona fide offer of employment or additional hours **up to** 40 hours per week. A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time **up to** 40 hours per week; and temporary, seasonal or permanent.

### **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.

## **NONCOMPLIANCE**

### **PENALTIES AT APPLICATION**

Noncompliance by a WEI while the application is pending results in **group** ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending must have benefits delayed.

A good cause determination is not required for applicants who are noncompliant prior to FIP case opening.

## **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.

Begin the sanction period with the first pay period of a month. Penalties are automatically calculated by the entry of noncompliance without good cause on the FSSP. This applies to active FIP cases, including those with a member add who is a WEI JET participant.

## **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 requirements 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. (BEM 233A)

In this case the timesheets filled out by the community service location show that Claimant did not meet her required participation. The Verification of Vocational Rehabilitation Status Forms (DHS-4698) submitted into evidence show that Claimant was not participating in a Michigan Rehabilitative Services (MRS) program at the time of her non-compliance.

## **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly sanctioned Claimant’s Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/

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Gary F. Heisler  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: May 17, 2010

Date Mailed: May 18, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

GFH/alc

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