

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: 2010-28972
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 2, 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 June 2, 2010. The claimant personally appeared and provided testimony.

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 March, 2010?
2. Did the department properly determine the claimant's Child Development and Care (CDC) benefits should be terminated for failure to provide the required verifications?

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 for medical reasons.

The claimant was mailed a Verification Checklist (DHS-3503) on September 2, 2009 that required her to provide updated medical documentation or return to WF/JET. (Department Exhibit 2, 3)

2. On October 5, 2009, the Medical Needs form (DHS-54A) was returned to the department. The doctor indicated the claimant was capable of participating in job seeking activities. However, another physician's slip indicated that the claimant could not work from September 17, 2009 through October 6, 2009. (Department Exhibit 4 - 6)

3. On January 20, 2010, the claimant was referred back to WF/JET and did attend. (Department Exhibit 7)

4. The claimant was a no call/no show on January 25, 2010. (Department Exhibit 9)

5. The claimant called on January 27, 2010 and indicated that she was sick. She provided documentation to excuse her absences on January 28 and 29, 2010. The claimant was informed to return to WF/JET on February 1, 2010. (Department Exhibit 9)

6. The claimant did not re-engage with WF/JET on February 1, 2010 and did not provide any documentation to excuse her absences on January 25 – January 27, 2010, so a triage was requested. (Department Exhibit 9)

7. The claimant was mailed a Notice of Noncompliance (DHS-2444) on February 2, 2010, scheduling a triage appointment for February 18, 2010. (Department Exhibit 27 – 28)

8. The claimant participated in the triage via telephone. The claimant was not given any good cause and she verbally agreed to sign a First Noncompliance Letter (DHS-754) to allow her to continue to WF/JET without sanction. The department reports that the claimant agreed to re-engage with WF/JET the following day, February 19, 2010. (Department Exhibit 8)

9. The claimant showed up at WF/JET the following day, but brought her child with her. The department found that this violated the terms of the DHS-754 and terminated the claimant's case. (Department Exhibit 8)

10. On February 17, 2010, the claimant was mailed a Child Care Family Preservation Need Verification (DHS-4575) form. The form was due to be returned to the department by March 1, 2010. (Department Exhibit 16 – 17)

11. The claimant did not return the form and another copy was mailed to her on March 5, 2010. (Department Exhibit 18)

12. On March 6, 2010, the department mailed the claimant a Notice of Case Action (DHS-1605) that indicated the claimant's FIP and CDC would close. (Department Exhibit 20)

13. The claimant submitted a hearing request on March 25, 2010.

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.

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 indicates that she had documentation to excuse her absences that the department did not allow her to provide to evaluate good cause.

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 when she participated in the triage by telephone, the staff members told her to bring her medical documentation for her absences to WF/JET the next day, February 19, 2010. The claimant further testified that she brought her child with her that day because she thought she was just turning in her medical documentation to allow the department to determine good cause.

In fact, the claimant did present several medical documents at this hearing, covering the dates of alleged noncompliance (see claimant's exhibits 31 – 39). The claimant stated that she tried to present these documents to WF/JET staff member RV, but she told her to hold onto them. The claimant testified that she tried to turn in the medical documentation on February 19, 2010, but then WF/JET wouldn't accept the documents. No individual from

WF/JET was present at the hearing to provide any testimony as to if the claimant did attempt to turn in her medical documentation.

Since there is no credible evidence presented by the department to contradict the claimant's contention that she presented the documents to WF/JET twice, this Administrative Law Judge is unable to find that the department made a proper good cause determination based on the evidence that had been presented by the claimant.

Therefore, the department should conduct another triage appointment to determine if the claimant had good cause for the noncompliance from January 25 – 27, 2010 and February 1, 2010. The claimant shall provide her medical documentation to the department for the scheduled triage appointment. The department shall then make a good cause determination and proceed in accordance with department policy.

The claimant also requested a hearing on her CDC closure. The claimant was mailed two Child Care Family Preservation Need Verification forms. The first was mailed on February 17, 2010 and was due back by March 1, 2010. When the claimant did not return this form, another was mailed by the department on March 5, 2010. The claimant did not return this form either. Department policy requires the claimant to cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105. In this case, the claimant was required to provide documentation of the CDC need by returning the Child Care Family Preservation Need Verification form. When the claimant did not return either form, the department could not determine the claimant's ongoing eligibility for CDC services and properly terminated her CDC benefits.

DECISION AND ORDER

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

1. The department improperly determined the claimant was noncompliant with WF/JET program requirements without good cause and improperly terminated her FIP case.
2. The department properly terminated the claimant's CDC benefits for failure to provide the required verifications.

Accordingly, the department's actions are UPHELD in part, and REVERSED in part.

The department shall:

1. Schedule and hold another triage, allowing the claimant the opportunity to present her medical documentation to determine good cause.
2. Proceed in accordance with department policy once a good cause determination has been made.

SO ORDERED.

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

Date Signed: July 12, 2010

Date Mailed: July 13, 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]