

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: 2010-29337
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2010
Clare 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 5, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly deny Claimant's Family Independence Program (FIP) application 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) On February 9, 2010, Claimant submitted an application for Family Independence Program (FIP) benefits. On the application Claimant marked that her 17 year old son was not in school.

(2) On February 11, 2010, Claimant was in the office for the required interview. Claimant was given a Work First/Jobs Education and Training Appointment Notice (DHS-4785 form) for her son, requiring him to attend the Michigan Works Agency/Jobs Education and Training Program (JET) on February 22, 2010.

(3) On February 22, 2010, Claimant's son did not attend the Michigan Works Agency/Jobs Education and Training Program (JET). Claimant dropped of a document dated October 20, 2009, regarding online course registration for her son. The document had three classes written on it.

(4) On February 23, 2010, the Department case worker telephoned the school contact for the online courses and inquired about Claimant's son's participation. The case worker recorded that she was told Claimant's son had only accessed one of the three classes, one time on February 17, 2010.

(5) On March 18, 2009, Claimant was sent a Notice of Case Action (DHS-1605) stating her Family Independence Program (FIP) application was denied.

(6) On March 23, 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.

JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth (DELEG) through the Michigan Works! Agencies (MWA's). The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. JET case managers use the One-Stop Management Information System also known as the OSMIS to record the clients assigned activities and participation. In this item the OSMIS is referred to as the MIS.

WEIs not referred to JET will participate in other activities to overcome barriers so they may eventually be referred to JET or other employment service provider. DHS must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP).

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. For more about penalties refer to:

- BEM 233A - FIP-related penalties.
- BEM 233C - RAP Cash penalties.

See BEM 230B and BEM 233B for FAP employment requirements.

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.

MANDATORY PARTICIPANT'S 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.

Meeting Participation Through Education

Dependents

Clients who are WEIs and full-time students in elementary or high school are noted here.

Age 16 or 17

Full-time high school students are given the participation of Secondary Education. They are neither required to submit a FAST, develop an FSSP, nor participate in employment services as long as they continue full-time school attendance.

Age 18 or 19

Full-time high school students expected to graduate (or complete the requirement to graduate) by age 20 are also given the participation of Secondary Education. They are neither required to submit a FAST, develop an FSSP nor participate in employment services as long as they continue full-time school attendance. (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 SELFSUFFICIENCYRELATED 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 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 MW A 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)

SCHOOL ATTENDANCE AND STUDENT STATUS

DEPARTMENT POLICY

FIP Only

Children are expected to attend school full-time, and graduate from high school or a high school equivalency program, in order to enhance their potential to obtain future employment leading to self-sufficiency.

Children ages 16 and 17 must attend school full-time or participate in employment-related activities (See BEM 230A).

Children ages 18 or 19 must attend high school full-time and be reasonably expected to graduate by age 20, as a condition of eligibility.

DEFINITIONS

FIP Only

DOE means the Michigan Department of Education.

ISD means intermediate school district.

High school means a course of study leading to the attainment of a high school diploma, or its equivalency. The following programs are considered to meet the definition of high school equivalency:

- Adult basic education (ABE)
- Alternative education
- Charter school
- General education development (GED)
- Home school
- Non-public school
- Vocational or technical training

School means a:

- Public school; or
- Nonpublic school registered with the DOE; or
- Home school.

SCHOOL ATTENDANCE

Children

FIP Only

Children ages 16 through 19 must meet one of the conditions described below.

- A child age 16 or 17 must be a full-time student **or** participate in employment-related activities.

- A child age 18 or 19 must be a full-time high school student **and** be expected to graduate (or complete the requirements to graduate) by age 20.

A child must be enrolled in and attending a school as defined in this item. Courses which are not administered by a **school** do **not** meet the requirement of school attendance. Correspondence or Web-based courses administered by a school or used as part of a home school curriculum are acceptable.

HOURS OF ENROLLMENT AND ATTENDANCE

FIP and FAP

Schools determine:

- The level of enrollment, (i.e.; full-time, half-time, or part-time); and
- Attendance compliance; and
- Suspensions, (i.e.; reasons for/duration).

VERIFICATION REQUIREMENTS

FIP Only

Verify school enrollment and attendance at application, and at each birthday beginning with age 16.

Verify school enrollment/attendance, as needed, for minor parents (see BEM 201).

You may ask the client to authorize the school to send a copy of the student's report card to the DHS. Authorization is done using form DHS-3380. Request report cards for minor parents. For other students, reportcards may be requested at your discretion. There is no penalty if the client does not agree to authorize this.

Verification Sources

FIP

School enrollment and attendance:

- Form DHS-3380, Verification of School Enrollment (manually issued).
- Form DHS-3380A, Verification of High School Enrollment (system generated at: birthdays 16, 17, 18, and 19; and May of each year for 18 and 19-year-old).
- SM-4325, Nonpublic School Membership Report. The completion of this form is voluntary for home schools. Accept the client's statement.
- Report card.
- Other written statement verifying school enrollment, attendance, high school diploma or equivalency certificate requirement and/or the education program (degree or certificate), and signed by a school official.
- Telephone contact with the school. (BEM 245)

In this case it is undisputed that Claimant marked the application showing her son, [REDACTED] was not in school or that he did not participate in the Michigan Works Agency/Jobs Education and Training Program (JET) as assigned on February 22, 2010. The specific circumstances of this case require that Claimant present sufficient proof to defer [REDACTED] from JET prior to his required attendance or that [REDACTED] attend JET as assigned.

Claimant did not provide any documentation on the issue of deferral until the date [REDACTED] was required to attend JET and after the time that he was required to attend. Claimant submitted information showing that [REDACTED] was registered for three online classes. The documentation did not meet Department policy requirements cited above. "Other written statement verifying school enrollment, attendance, high school diploma or equivalency certificate requirement and/or the education program (degree or certificate), and signed by a school official." At that point policy indicates that [REDACTED] was in non-compliance and no further action was required by the Department. The case worker went above and beyond her responsibility and called the school to obtain additionally required information to determine if

█ should be deferred. She did not obtain sufficient information to warrant deferral and followed through with denying the application. Denial of Claimant's application was in compliance with Department policy.

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 denied Claimant's Family Independence Program (FIP) application 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/

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

Date Signed: May 11, 2010

Date Mailed: May 12, 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.

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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

cc:

