

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: 2010-31704
Issue No: 1038; 3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 27, 2010
Midland 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 27, 2010. The claimant personally appeared and provided testimony, along with her husband, [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 April, 2010?
2. Did the department properly sanction one parent from the Food Assistance Program (FAP) benefit group?

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 claimants were both mandatory WF/JET participants.

2. On March 25, 2010, the claimants signed the two-parent agreement, with [REDACTED] agreeing to participate for 28 hours and Angela agreeing to participate for 27 hours.

(Department Exhibit 15, 19)

3. On March 25, 2010, the department received a physician's note for [REDACTED] which requested she be excused from WF/JET participation for one week (which would be until April 1, 2010). [REDACTED] did not return on April 1, 2010. (Department Exhibit 14, 43)

4. On April 2, 2010, [REDACTED] and [REDACTED] were mailed assignment letters that informed them they must return to WF/JET activities on April 5, 2010. (Department Exhibit 13, 16)

5. The department worker called the claimants' home on April 2, 2010 and spoke with [REDACTED]. The department staff member informed [REDACTED] that they were in noncompliance and needed to report back to WF/JET on April 5, 2010 at 7:00 am. (Department Exhibit 3 – 4, 43)

6. [REDACTED] was a no call/no show for WF/JET on March 29, 2010. [REDACTED] called on March 30, 2010 and informed the department that [REDACTED] step-mother was in the hospital. [REDACTED] was informed that [REDACTED] would be granted two days of approved absence, but must return to WF/JET on March 31, 2010. The claimant was a no call/no show for the entire week of March 28 – April 3, 2010. (Department Exhibit 4, 29)

7. On March 31, 2010, the department received a fax from Mid-Michigan Medical Center that indicated [REDACTED] step-mother had been admitted on March 29, 2010. (Department Exhibit 18)

8. The claimants did not arrive at WF/JET on April 5, 2010 until 8:30 am, although they were scheduled to attend at 7:00 am. (Department Exhibit 41)

9. The claimants were mailed a Notice of Noncompliance (DHS-2444) on April 7, 2010, scheduling a triage appointment for them on April 13, 2010. (Department Exhibit 5 – 6)

10. The claimants did attend the triage appointment. The department did not give the claimants good cause for the noncompliance and case closure for one year was recommended. (Department Exhibit 20 – 21)

11. The claimants submitted a hearing request on April 13, 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).

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.

When to Disqualify

- . Disqualify a FAP group member for noncompliance when:
- . The client was active both FIP and FAP on the date of the FIP noncompliance, and
- . The client did not comply with FIP employment requirements, and
- . The client is not deferred from FAP work requirements (see DEFERRALS in PEM 230B), and the client did not have good cause for the noncompliance. PEM 233B, 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

claimants admit that they did not participate with WF/JET for the required amount of hours.

██████████ admits that he did not attend WF/JET the week of March 28 – April 3, 2010.

██████████ admits that her physician's slip excused her until April 1, 2010, but that she didn't attend WF/JET until April 5, 2010.

The claimants indicate that they have good cause for the 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 claimants provide reasons for their noncompliance. ██████████ step-mother was in the hospital during this time period. The department did receive a fax from Mid-Michigan Medical Center that indicated ██████████ step-mother had been admitted on March 29, 2010. Based on this documentation, ██████████ was given two days of excused absences (which is the maximum allowed per month). However, ██████████ was supposed to return to WF/JET on March 31, 2010, but he did not do so.

██████████ admits that she was supposed to return from her medical leave on April 1, 2010 and did not do so. ██████████ testified that she mixed up the days and thought she was supposed to return on April 5, 2010. However, the physician's slip clearly is dated March 25, 2010 and only indicates she is excused for one week. This means she was to return to WF/JET on April 1 and April 2, 2010 and did not do so. ██████████ provides no reason or documentation for not returning when she was supposed to.

Once all of these incidents had taken place, the claimants were given one last chance to re-engage with WF/JET and comply with requirements. The claimants were mailed letters and a telephone call was placed to their house on April 2, 2010. The claimants were informed they

must attend WF/JET on April 5, 2010 by 7:00 am. [REDACTED] admitted that he spoke with the department staff member about returning to WF/JET on April 5, 2010 at 7:00.

However, the claimants did not arrive at WF/JET until 8:30 am. The claimants indicated that they had daycare issues and couldn't take the children into the daycare provider until 8:00 am. However, this is less than convincing. The department testified that they called the daycare center the clients were using and the employee indicated that the clients could have brought the children in at any time. Further, the claimants supposedly had back-up child care. There is no dispute that the claimants knew they had to report to WF/JET on that Monday by Friday afternoon. Thus, there was more than enough time for the claimants' to make child care arrangements.

Further, even if this excuse is accepted, there is still no explanation for [REDACTED]' absence from April 1 and April 2, 2010. Thus, this Administrative Law Judge finds that the department properly found noncompliance without good cause.

The claimants were active FIP and FAP on the date of noncompliance. As the family is a two-parent family and does not meet any deferral criteria, one parent is properly sanctioned from the FAP group during the FIP sanction period.

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 claimants were noncompliant with WF/JET program requirements without good cause and properly determined their FIP case should be terminated for a one-year sanction in April, 2010.

2. The department properly sanctioned one parent from the FAP group for the FIP noncompliance.

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: July 27, 2010

Date Mailed: July 29, 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 

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