

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-33772

Issue No: 1038, 3029

[REDACTED]

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 3, 2010. The claimant appeared and provided testimony. The claimant was represented by attorney, [REDACTED].

ISSUES

1. Did the department properly determine the claimant was noncompliant with Family Independence Program (FIP) requirements of attending the Work First/Jobs, Education and Training (WF/JET) program?
2. Did the department properly sanction the claimant from the Food Assistance Program (FAP) case for the WF/JET noncompliance?

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 August 3, 2009, the claimant was mailed a letter that assigned him to attend weekly counseling sessions, beginning on August 17, 2009. (Department Exhibit 2 – 3)
2. The claimant missed two of the counseling sessions. A triage was held by telephone on October 20, 2009. The claimant agreed to sign the First

Noncompliance Letter (DHS-754), which required the claimant to attend make-up sessions of the counseling. (Department Exhibit 4, 5)

3. On January 11, 2010, the Medical Review Team (MRT) assessed the claimant's ability to participate with WF/JET. The MRT noted that the claimant was not disabled and was work ready with some limitations. The claimant was limited to unskilled work with some lifting/carrying restrictions and standing/walking/sitting limitations. (Department Exhibit 6)
4. On February 25, 2010, a department worker met with the claimant and informed him that WF/JET would help him complete applications, give him training for reading and math, and assist with job resources. (Department Exhibit 7)
5. On March 29, 2010, the department received a telephone call from an employer where the claimant had submitted an application. The employer stated the claimant was sabotaging his job search. (Department Exhibit 23)
6. On March 30, 2010 the claimant was mailed a Notice of Noncompliance (DHS-2444), scheduling a triage appointment on April 6, 2010. (Department Exhibit 8 – 9)
7. The claimant attended the triage appointment. The department found no good cause for the noncompliance. The department did offer the claimant another chance to comply with WF/JET requirements without losing his assistance. The claimant signed another First Noncompliance Letter (DHS-754) on April 6, 2010 and agreed to apply for jobs in person, complete 30 hours of job search by the following Monday and agreed not to sabotage his job searching. (Department Exhibit 11, 12)
8. The claimant submitted his job search logs on Monday, but none of the entries were verifiable, therefore, the department found he had not completed the compliance test. (Department Exhibit 13, 16 – 18, 22)
9. The department mailed the claimant a Notice of Case Action (DHS-1605) on April 14, 2010, informing him that his FIP case would close effective May 1, 2010 and that his FAP would be reduced because he would be sanctioned from the FAP group. (Department Exhibit 29 – 32)
10. The claimant submitted a hearing request on April 22, 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 Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found 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 is found to have been noncompliant. The claimant was initially placed into triage in October, 2009 for missing two dates of his required counseling sessions. The claimant did not dispute that he missed these counseling sessions and admitted that he was noncompliant.

The claimant was next placed into triage in April, 2010, because he was sabotaging his job search efforts. The claimant told potential employers that he was only submitting an application because WF/JET was making him and that he shouldn't be hired by the employer because he was disabled. The claimant did not dispute that he had made these comments to potential employers.

The claimant was given yet another opportunity to comply with program requirements. The claimant agreed to complete 30 hours of job searching and apply for jobs in person, without sabotaging his job seeking efforts. The claimant turned in job search logs that did not meet WF/JET requirements because he failed to provide verifiable entries. For example, the claimant had four entries that stated he read newspapers for a total of five hours (although claimant indicates that he can't read). There is no indication that applications or resumes were completed or submitted. The claimant indicates that he spent five hours on the computer. However, no applications were submitted or completed. Many of the other entries are vague and not capable of being verified. The client indicated that he picked up five applications, but never indicates where he got these applications. The client indicated that he called on previous applications, but does not indicate what employers he was checking in with.

The claimant's representative argues that the claimant should have been deferred from WF/JET participation because he meets certain requirements as set forth in state regulations and DHS policy. The pertinent state regulations are contained in MCL 400.57f. This section states:

“Beginning April 1, 2007, an individual who meets 1 or more of the following criteria to the extent that the individual, based on medical evidence and an assessment of need by the department, is severely restricted in his or her ability to participate in employment or training activities:

(v) An individual with low intellectual capacity or learning disabilities that impede comprehension and prevent success in acquiring basic reading, writing and math skills, including, but not limited to, an individual with an intelligence quotient less than 80.

(vii) An individual with physical limitations on his or her ability to perform routine manual labor tasks, including, but not limited to, bending or lifting, combined with intellectual capacity or learning disabilities.”

This section of MCL has been incorporated into department policy in BEM 230A. Page 12 of 38 states:

“Persons with a mental or physical illness, limitation, or incapacity expected to last more than 90 days and preventing their participation in employment-related activities may be deferred for more than 90 days. Clients in this category may be referred to Michigan Rehabilitation Services (MRS) or the Commission for the Blind for consultation and may be eligible for ongoing services from those agencies. This includes:

- An individual with low intellectual capacity or learning disabilities that impede comprehension and prevent success in acquiring basic reading, writing and math skills, including, but not limited to, an individual with an intelligence quotient less than 80.
- An individual with documented chronic mental health problems that cannot be controlled through treatment or medication.
- An individual with physical limitations on his or her ability to perform routine manual labor tasks, including, but not limited to, bending or lifting, combined with intellectual capacity or learning disabilities.”

The department representatives contend that the claimant was properly engaged with WF/JET and was capable of meeting program requirements, especially with the level of assistance and program modifications WF/JET staff made for the client. Department policy states that “DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help...” BEM 230A.

It is noted that the claimant's medical records were reviewed by the MRT and the claimant was determined to be work ready with some limitations. This means that the claimant would be required to participate with WF/JET within his abilities. WF/JET can develop programs or activities that meet the claimant's limitations while still allowing them to participate with WF/JET.

The department has established through testimony and documentary evidence that they did provide the claimant with substantial accommodations and extra assistance to complete his WF/JET requirements. The claimant was allowed to include activities such as doctor appointments and physical therapy appointments to meet his weekly requirements. WF/JET staff helped him complete a "cheat application" that was already completed with all pertinent parts, so that he could copy the information down onto other applications that he submitted to employers. WF/JET staff also offered to sit with him one-on-one and help him complete any applications or assignments that he needed assistance to complete. The claimant was offered tutoring, given one-on-one assistance with computer skills and had been offered the opportunity to participate with MRS. The claimant refused the tutoring assistance and refused to participate with MRS, saying that they did not have enough resources to help him.

The claimant had been evaluated In September, 2008 by MRS to find his current level of intellectual functioning, academic achievement and personality functioning in order to assist in developing programming. The client had been involved in special education for assistance with reading, math and speech. The client dropped out of school in the 10th grade. However, he has an extensive history of working manual labor jobs. The client has custody or two of his children. The client's full-scale IQ score was 91, which places him in the average range, above the 80 that department policy states may be indicative of a person with cognitive disabilities that could interfere with WF/JET participation. The results of the testing show that the client's reading skills would correspond to about the 3.1 grade level, his math scores would correspond to about the 6.5 grade level and his spelling would correspond to about the 1.9 grade level.

While the claimant does have some reading and writing limitations, the claimant has a substantial history of manual labor and does not have any physical limitations that would affect his ability to perform routine manual labor tasks. This Administrative Law Judge finds that the department offered ample accommodations to assist the claimant with his reading and writing limitations. In most cases, the claimant refused to accept the assistance.

Further, it is noted that the claimant's instances of noncompliance do not involve his reading and writing skills. The claimant did not attend two sessions of counseling. He testified at this hearing that he did not know why he didn't attend the sessions. The claimant sabotaged his job search efforts by telling employers not to bother hiring him because he couldn't work for them. Again, this does not

involve his reading or writing skills. Lastly, he turned in job search logs with no verifiable information. The claimant was capable of completing the job search logs; he simply refused to provide the required information to allow the department to be able to verify his efforts. Therefore, this Administrative Law Judge does not find the claimant's instances of noncompliance to be due to any disability, but due to his own actions in refusing to comply with program requirements.

Department policy indicates that a client who is noncompliant with WF/JET requirements while active on a FAP case is to be sanctioned from the FAP case unless they meet deferral criteria. BEM 233B. As the claimant does not meet the deferral criteria, he is properly sanctioned from the FAP group for the duration of the sanction.

