

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: 2010-40026

Issue No: 1038, 3029

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 21, 2010

Montcalm 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 July 21, 2010. Claimant appeared and testified.

ISSUES

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?

Did the Department of Human Services properly sanction Claimant's Food Assistance Program (FAP) 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's benefit group consisted of herself, her husband [REDACTED] and four children between the ages of 10 and 16. Claimant is disabled and receives Supplemental Security Income (SSI) benefits.

(2) On November 12, 2009, [REDACTED] was temporarily deferred from participation in the Michigan Works Agency/Jobs Education and Training Program (JET).

(3) On December 7, 2009, a Medical Examination Report (form DHS-49) on [REDACTED] was submitted in support of the request for JET deferral.

(4) On April 2, 2010, the Medical Review Team denied a JET deferral for [REDACTED]

(5) On March 31, 2010, a Work First/Jobs Education and Training Appointment Notice (DHS-4785 form) was sent requiring [REDACTED] to attend On April 12, 2010.

(6) On April 12, 2010, [REDACTED] did not attend the Michigan Works Agency/Jobs Education and Training Program (JET).

(7) On April 14, 2010, Claimant was sent a Notice of Non-Compliance (DHS-2444) stating [REDACTED] had not participated in required activity and scheduling a meeting for April 21, 2010.

(8) On April 21, 2010, neither Claimant nor [REDACTED] participated in the triage meeting. The Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.

(9) On April 26, 2010, Claimant was sent a Notice of Case Action (DHS-1605) stating that her Family Independence Program (FIP) and Food Assistance Program (FAP) cases would be sanctioned.

(10) On May 5, 2010, Claimant submitted a timely 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 (MWAs). 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 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.

### **Long-Term Incapacity**

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.

**Note:** A client with a condition or impairment that is pregnancy-related must be considered for deferral. Clients should **not** be referred to MRS, medical review team (MRT) or an SSI Advocate if the only conditions or impairments are due to pregnancy.

Michigan Commission for the Blind offers vocational rehabilitation services for individuals who have a visual impairment. Clients who are receiving services from the commission are not eligible for services from MRS.

MRS offers vocational rehabilitation services to individuals with disabilities.

When a client states they are disabled or indicates that they may be unable to participate in work or JET because of a mental or physical condition, injury, illness, impairment, or problem (including those who have applied for RSDI/SSI) at intake, redetermination or anytime during an ongoing benefit period,

require the client to provide verification from their doctor (a DHS-49, Medical Examination Report or DHS-54A, Medical Needs may be used).

### **MRT Decision**

Take action below that pertains to the decision rendered by the MRT.

All decisions review the medical records and information provided by MRT to determine what accommodations, other than a deferral from JET, the client needs to be able to benefit from the FIP program and to pursue employment and or self sufficiency related activities. Follow the procedure for accommodating disabilities in reasonable accommodation in this item.

**Disabled:** The client is potentially eligible for RSDI/SSI. Verify the client's status with LSAM and SSA.

- Employment code remains IN.
- Require the client to apply for RSDI/SSI if they have not already done so. Refer the client to SSA using form DHS-1552, Verification of Application or Appeal For SSI/RSDI.
- When the client has an application pending with SSA and the client is not active with LSAM, the FIS must monitor the RSDI/SSI claim by setting the medical review date for a three month follow up.

**Work ready with limitations:** Do not require the client to apply for RSDI/SSI.

- Set employment code to MWA Activity or JET (WF) in Bridges.
- Refer to JET. Identify the clients limitations using additional information codes and case notes on the DHS-2439 when the referral is made to JET.

### **Work ready:**

- Set employment code to WF in Bridges.
- Refer to JET.

When a MRT decision has been completed and the client states they have additional medical evidence or a new condition, gather new verification and send for an updated MRT decision.

If new medical evidence is not provided **do not** send the case back to MRT. The previous MRT decision on the client stands.

If the client comes in with a doctor's note after the MRT decision and does not have new medical evidence or a new condition send the DHS-518 to the client's doctor and request supporting medical evidence.

Determine eligibility for deferral based on the following three deferral reasons. FIS must assign and maintain FSSP activities to ensure continued pursuit of self-sufficiency while gathering verification or assisting clients with obtaining medical verification or testing. If testing assistance is necessary, follow instructions in BEM 232, Medical Exams, Immunizations and Tests. (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 SELFSUFFICIENCY 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:

**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.

### **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 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)

### **FAILURE TO MEET EMPLOYMENT REQUIREMENTS:**

#### **FAP**

#### **DEPARTMENT PHILOSOPHY**

DHS requires participation in employment and/or self-sufficiency related activities associated with the Family Independence Program (FIP) or Refugee Assistance Program (RAP). Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. There are consequences for client, who refuse to participate in FIP/RAP employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause.

#### **DEPARTMENT POLICY**

The policies in this item apply to all FAP applicants and recipients age 16 and over. Noncompliance, without good cause, with employment requirements for FIP/RAP ( [see BEM 233A](#) ) may affect FAP if **both** programs were active on the date of the FIP noncompliance.

Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following two situations:

- Client is active FIP/ RAP and FAP and becomes noncompliant with a cash program requirement without good cause.
- Client is pending or active FAP only and refuses employment (voluntarily quits a job, is fired or voluntarily reduces hours of employment) without good cause.

At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP.

### **PROCESS FOR FIP/RAP ASSOCIATED NONCOMPLIANCE**

When you learn that a client is noncompliant do the following:

- Send the DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days of the noncompliance.

Check all programs that apply to the noncompliance (FIP/RAP and/or RAP) and the related penalty count that applies to each as outlined on the form.

- Hold the triage appointment/phone conference and document the results in Bridges.

**Note:** If the client does not participate in the triage meeting, determine good cause for FAP based on information known at the time of the determination.

- Determine FAP good cause separately from the FIP/RAP based on FAP good cause reasons defined later in this item. If a good cause reason is selected for FIP/RAP it also applies to FAP. If the client does not meet one of the FIP/RAP good cause reasons in the drop down list, but does meet one of the FAP only good cause reasons, select the FAP only good cause reason to avoid client disqualification on FAP. Bridges makes both determinations simultaneously.

### **When To Disqualify**

Disqualify a FAP group member for noncompliance when all the following exist:

- The client was **active** both FIP and FAP on the date of the FIP noncompliance, **and**
- The client did **not** comply with FIP/RAP employment requirements, **and**
- The client is subject to a penalty on the FIP/RAP program, **and**

- The client is **not** deferred from FAP work requirements (see [DEFERRALS](#) in BEM 230B), **and**
- The client did not have good cause for the noncompliance. (BEM 233B)

## **EMPLOYMENT-RELATED ACTIVITIES: FAP**

### **DEPARTMENT PHILOSOPHY**

Department of Human Services (DHS) has a unique opportunity to assist families in becoming strong, viable, participative members of the community. By involving the adult members of the household in employment-related activities, we help restore self-confidence and a sense of self-worth. These are cornerstones to building strong, self-reliant families.

The goal of the Food Assistance Program is to ensure sound nutrition among children and adults. In addition, the goal of our employment-related policies for FAP households is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training.

### **DEPARTMENT POLICY**

Use this item to determine work-related activities and deferrals for FAP clients.

Also use this item when FIP or RAP closes for any reason other than a penalty or disqualification.

The items listed below must be used when FIP or RAP closes due to noncompliance and a penalty or disqualification is imposed. If the noncompliant client:

- Received FIP and FAP on the date of noncompliance, see [BEM 233B](#).
- Received RAP and FAP on the date of noncompliance, see [BEM 233C](#).
- Did not receive FIP or RAP on the date of noncompliance, see [BEM 233B](#).

## **DEFERRALS**

Clients meeting one of the criteria below are temporarily deferred from employment-related activities.

### **Care of Disabled Household Member**

Defer one person who personally provides care for a disabled member of his/her own FAP group. (PEM 230B)

In this case the Department has followed their policy as cited above. [REDACTED] was temporarily deferred, he was required to provide medical documentation which was evaluated by the Medical Review Team (MRT), and when MRT denied a JET deferral [REDACTED] was referred to JET. [REDACTED] asserts he could not attend JET due to transportation problems. The Work First/Jobs Education and Training Appointment Notice (DHS-4785 form) clearly states that if there are reasons a person cannot keep the appointment, they should call their DHS specialist BEFORE missing the appointment. The form also clearly states that DHS will help with transportation and child care if needed to attend the appointment. [REDACTED] did not contact his DHS specialist or JET to arrange for rescheduling and/or transportation assistance. The evidence does not show any good cause (as defined in policy above) for [REDACTED] failure to attend the JET program.

Neither Claimant nor [REDACTED] attended the scheduled meeting on April 21, 2010. [REDACTED] testified that they did not receive the Notice of Non-Compliance (DHS-2444) mailed to them on April 14, 2010. The notice was mailed to Claimant's address of record. [REDACTED] testified they have been having problems with mail delivery during April and May of this year. [REDACTED] specifically testified that one of Claimant's SSI checks had gone to a neighbor and they had not received a shut off notice from the utility company. Evidence in this record shows that Claimant did receive the Work First/Jobs Education and Training Appointment Notice (DHS-4785 form) mailed on March 31, 2010 and the Notice of Case Action (DHS-1605) mailed on April 26, 2010.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). The totality of evidence in the record which relates to receipt of mail, is insufficient to rebut this legal presumption.

There are two separate benefit programs which the Department intends to sanction because of the failure to participate in employment and/or self-sufficiency related activities. A question has risen regarding whether the Food Assistance Program (FAP) should be sanctioned. The Department case worker was not present at the hearing but in the Hearing Summary she prepared, she noted “it looks like there was a deferral for the FAP program.” In this case Claimant is disabled and receiving Supplemental Security Income (SSI) benefits. The policy cited above specifies that one person who personally provides care for a disabled member of his/her own FAP group is deferred from FAP employment-related activities. In this case Claimant’s Food Assistance Program (FAP) case should not be sanctioned for [REDACTED] failure to attend the JET program.

#### 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, regarding Claimant's Family Independence Program (FIP), are UPHeld.

The Department of Human Services DID NOT properly sanction Claimant's Food Assistance Program (FAP) 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, regarding Claimant's Food Assistance Program (FAP), are REVERSED.

/s/

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

Date Signed: July 23, 2010

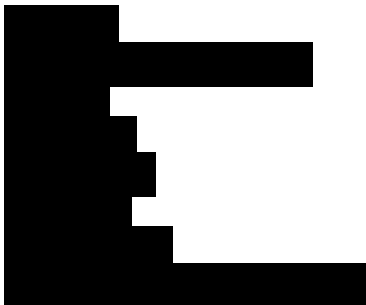
Date Mailed: July 26, 2010

**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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