

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: 2010-5075
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 2010
Ingham 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 hearing was held on February 4, 2010. Claimant appeared and testified.

ISSUE

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?

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 was a mandatory participant in the Michigan Works Agency/Jobs Education and Training Program (JET).

(2) On August 5, 2009, Claimant participated in a triage meeting regarding her compliance with the Michigan Works Agency/Jobs, Education and Training Program (JET). The Department determined that Claimant had been non-compliant and there was no good cause for the non-compliance. Claimant signed a First Non-Compliance Letter (DHS-754) agreeing to be onsite at the Jobs Education and Training Program (JET) location between 8:30 am and 4:00 pm on the dates of 8/6, 8/7, 8/10, 8/11, and 8/12. If Claimant met the agreement her Family Independence Program (FIP) would not be sanctioned.

(2) On August 12, 2009, Claimant was not at the Jobs Education and Training Program (JET) location at 8:30 am. Claimant called the location at 9:20 and left a voice message that she had not punched in and would be volunteering at a church summer camp. DHS was notified that Claimant had failed the compliance test.

(2) On August 14, 2009, Claimant was sent a Notice of Case Action (DHS-1605) stating her Family Independence Program (FIP) case would close beginning September 1, 2009.

(3) On August 19, 2009, 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.

BEM 233A 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-Weiss (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.

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 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 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.

PROCESSING THE FIP CLOSURE

Follow the procedures outlined below for processing the FIP closure:

- Send a DHS-2444, Notice of Employment and/or Self-Sufficiency- Related Noncompliance, within three days after learning of the noncompliance. You must include the following information on the DHS-2444:
 - The date(s) of the noncompliance.
 - The reason the client was determined to be noncompliant.
 - The penalty that will be imposed.
 - Schedule a triage to be held within the negative action period.
- Determine good cause during triage and prior to the negative action effective date. Good cause must be verified and can be based on information already on file with the DHS or the JET program. Document the good cause determination on the sanction detail screen.

First Case Noncompliance Without Loss of Benefits

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is *No Good Cause*", do the following:

1. Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.
2. Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period.
3. Advise the client that the instance of noncompliance will remain on record even if the client complies. The noncompliance will be excused, but not erased and could result in longer sanctions if the client is noncompliant in the future.
4. If the client **accepts** the offer to comply and agrees with the department's decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754.
5. When a phone triage is conducted for a first noncompliance and the client agrees to comply, complete the DHS-754 as you would complete for an in-person triage meeting. When completing the form 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 and the JET case manager was not included in the phone triage.
6. Enter the outcome of the *Excuse Offer* in Bridges.
7. When the client verifies compliance before the *Excuse Offer* due date and is meeting the assigned activity that corrects the noncompliance, reinstate the case with no loss of benefits.

Note: Verification of completion of a compliance activity may include a signed copy of the DHS-754 or any collateral contact with JET or other service provider.
8. If the client **does not accept** the offer to comply, document the decision in Bridges.
9. If the client **disagrees** with the department's decision of noncompliance without good cause, use the second check box on the DHS-754 that advises the client not to sign the form. Assist the client with filing a hearing request and advise them that if they lose the hearing, they will receive a new notice of noncompliance and a

new meeting date and they have the right to agree to activities outlined on the DHS-754 and avoid the financial penalty at that time, unless another group member uses the family's first excuse before the hearing issue is settled.

10. Send a new DHS-2444 with an appointment date and time. The client must attend the triage and comply with assigned activities before the 754 due date.

11. You must enter all triage results at one time in Bridges. If the client fails to meet or contact the FIS or fails to provide verification of compliance without good cause, the three-month sanction applies.

This policy only applies for the first case of noncompliance on or after April 1, 2007. It is only offered one time for each case for the first noncompliant member on that case when there is no good cause.

In this case, Claimant does not dispute that she agreed to a compliance test that required her to be on site at the Jobs Education and Training Program (JET) location for five days for a total of 40 hours. Claimant testified that she was allowed to leave the location and go do community service at the church during the compliance test. Testimony from Jobs Education and Training Program (JET) worker Emery and admissible documentation from M. Rahme the JET Director confirm that Claimant was allowed to leave the site during the compliance test, after punching in at the beginning of the day.

It is undisputed that Claimant signed in at 8:30 am the first four days of the compliance test, and did not sign in at 8:30 am on the fifth day. Claimant asserts that on the fifth day there was a church function first thing in the morning and she (Claimant) had the understanding that she could go directly to the function and not sign in at 8:30 that day. The documentation from M. Rahme describes a conversation between herself and Claimant on 8/11/09. M. Rahme recorded that on 8/11/09, Claimant was specifically told to punch in the next morning because it was the last day of the compliance test. M. Rahme's documentation also says that Claimant

stated she (Claimant) would be in the next morning because she was bringing her daughter in to speak with an advisor. M. Rahme did not record any mention of a church function first thing on 8/12/09. During the hearing Claimant was specifically asked if she spoke to anyone about needing to go straight to the church function to get approval not to punch in at 8:30 am.

Claimant testified she did not speak to anyone about it because she thought it would be alright.

The definition of good cause given in Department policy (cited above) 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. Claimant's assertion that she got the impression it was alright for her NOT to punch in at 8:30 am on August 12, 2009, was the result of miscommunication by the Jobs, Education and Training Program (JET). The evidence in the record shows that Claimant did not attempt to verify her assumption even though she had ample opportunity to do so. The circumstances in this case do not constitute factors beyond Claimant's control for her failure to punch in.

At the hearing Claimant also insisted on submitting documents which show that she was authorized for psycho-educational therapy at [REDACTED] beginning late February, 2010. Claimant asserts she had rushing thoughts the morning of 8/12/09 and did not really think about going straight to the church that morning. This evidence does not provide any basis for a finding that Claimant's failure to punch in the morning of 8/12/09 was beyond her control due to mental health issues.

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, in this matter, are UPHELD.

/s/

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

Date Signed: March 29, 2010

Date Mailed: March 31, 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 

cc:

