

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: 2010-5314
Issue No: [REDACTED]
Case No: [REDACTED]
Load No: 1122000000
Hearing Date:
January 12, 2010
Berrien 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 January 12, 2010. The claimant personally appeared and provided testimony.

ISSUES

1. Did the department properly determine the claimant's Family Independence Program (FIP) case should be closed for a third Work First/Jobs, Education and Training (WF/JET) program noncompliance in August, 2009?
2. Did the department properly sanction the claimant's FAP case for the FIP-related noncompliance in August, 2009?

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 11, 2008, the claimant signed the "Contract with Michigan

Works/JET.” This document indicates that if she voluntarily reduces her hours, quits a job without having another job lined up immediately after, or is fired, that she will be in noncompliance and may be triaged or terminated from the program. (Department Exhibit G).

2. On July 7, 2009, the claimant called the department and informed them she stopped working at [REDACTED] in April, 2009. The claimant indicated that the employer had faxed over information to that effect, but no information was in the claimant’s file. The case worker contacted the employer on July 7, 2009 and the employer indicated that the claimant had been fired from her job due to violations of policy with a last day worked of April 3, 2009. (Department Exhibit A).

3. The claimant was mailed a Notice of Noncompliance (DHS-2444) on July 9, 2009, scheduling a triage appointment for July 15, 2009. (Department Exhibit F).

4. The claimant requested the triage be rescheduled. A second Notice of Noncompliance was mailed to the claimant on July 15, 2009, scheduling the triage for July 22, 2009. (Department Exhibit B).

5. The claimant was a no call/no show for the triage appointment. (Department Exhibit D).

6. The claimant was mailed a Notice of Case Action (DHS-1605) on August 4, 2009, informing her that her FIP benefits were being terminated and her FAP sanctioned for the FIP-related noncompliance. (Department Exhibit C).

7. The claimant submitted a hearing request on October 23, 2009.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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.

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:

- (a) The MWA verifies the client changed jobs or reduced hours in order to participate in an MWA approved education and training program.
- (b) 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.

Exception: Meeting participation requirements is NOT good cause for refusing suitable employment, unless the employment would interfere with approved education and training.

Do NOT penalize applicants or member adds that refused employment more than 30 days prior to the date of application or date of member add. PEM 233A, pp.2-3.

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.

DEFERRALS

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

Age

Defer a person who is:

- . under age 16 or at least age 60; **or**
- . a 16- or 17-year old who is not the grantee; **or**
- . a grantee age 16 or 17 who
 - .. lives with a parent or person in that role, **or**
 - .. attends school at least **half time**, **or**
 - .. is enrolled in an employment/training program at least **half time**.

See PEM 240 and 245 for verification requirements. PEM, Item 230B, pp. 3-4.

Care of a Child

Defer one person who personally provides care for a child under age 6 in the FAP group. PEM, Item 230B, p. 4.

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. Included in the definition of noncompliance is when a client quits a job or is fired for absenteeism or misconduct (not incompetence). PEM 233A. In this case, the claimant does not dispute that she was fired from her job at [REDACTED]. The department called the claimant's former employer on July 7, 2009 and was informed the claimant had been fired for policy violations.

The claimant was given the opportunity to provide good cause for her actions at the triage appointment. The claimant requested the triage appointment be rescheduled and the department did reschedule the appointment for the claimant. However, the claimant was a no call/no show

for the triage appointment. Therefore, the claimant presented no evidence that the job firing was due to incompetence and no evidence of good cause for the job firing.

The claimant does not provide any evidence of being fired due to incompetence or good cause for the firing at this hearing either. Thus, this Administrative Law Judge finds that the claimant was noncompliant with WF/JET rules by being fired by her employer for violating company policy. Further, this Administrative Law Judge finds no good cause for the claimant's noncompliance.

The department initially indicated that the claimant has had three instances of noncompliance. However, department policy requires the instances of noncompliance to have been subsequent to April 1, 2007. PEM 233A. The department has since determined that this is the claimant's second instance of noncompliance since April 1, 2007. (See Department Exhibit E). The department indicates that they have corrected this error.

The department also initially indicated that the claimant had not been removed from the FAP program group due to the FIP noncompliance. However, after checking the case further, the department staff member found that the claimant had been removed from the FAP group in error. The claimant is eligible to be deferred from FAP program requirements as she has a child under the age of six. PEM 230B. The department has restored the claimant to the FAP group and issued the claimant supplemental FAP benefits to account for the error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined the claimant was noncompliant with WF/JET program requirements without good cause and properly determined her FIP case should

be terminated, but improperly determined that this was the claimant's third instance of noncompliance and improperly sanctioned the claimant from the FAP group.

Accordingly, the department's actions are UPHELD in part and REVERSED in part. The department's determination that the claimant was noncompliant with WF/JET requirements is UPHELD.

The department's determination that this was the claimant's third instance of noncompliance and the department's actions in removing the claimant from the FAP group are REVERSED. The department shall:

1. Find that this was the claimant's second instance of noncompliance and sanction the FIP case accordingly.
2. Defer the claimant from FAP requirements and ensure the claimant is included in the FAP group.

SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 1, 2010

Date Mailed: March 2, 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.

2010-5314/SLK

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 [REDACTED]

cc: [REDACTED]