

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: 2010-542
Issue No: 1038; 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 17, 2009
Ottawa 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 November 17, 2009. 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 Work First/Jobs, Education and Training (WF/JET) program noncompliance in September, 2009?
2. Did the department properly compute the claimant's Food Assistance Program (FAP) benefits in September, 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 July 9, 2009, the claimant was temporarily deferred from WF/JET to allow her time to provide medical verification of disability.

2. On July 9, 2009, the claimant was mailed a Verification Checklist (DHS-3503) requiring her to return a statement verifying disability, i.e. statement from MD/DO, a completed Medical Examination Report (DHS-49) or a Medical Needs Form (DHS-54A). This documentation was due by July 20, 2009. (Department Exhibit 6).

3. The claimant contacted the department to indicate one of her medical appointments was changed to July 29, 2009 and requested additional time to provide the medical forms.

4. The claimant was mailed a Medical Determination Verification Checklist (DHS-3503-MRT) on July 22, 2009, requiring the claimant to submit a Psychiatric/Psychological Examination Report (DHS-0049-D) and a Mental Residual Functional Capacity Assessment (DHS-0049-E) by August 3, 2009. (Department Exhibit 7).

5. When no medical documentation was received, the claimant was mailed a JET Appointment Notice (DHS-4785) on August 17, 2009, scheduling the claimant for WF/JET orientation on August 24, 2009. (Department Exhibit 8).

6. The claimant did not attend the WF/JET orientation. (Department Exhibit 9).

7. The claimant was mailed a Notice of Noncompliance (DHS-2444) on August 26, 2009, scheduling a triage appointment for September 3, 2009. (Department Exhibit 10 – 11).

8. Since the claimant was coming into the department on August 31, 2009 for a redetermination interview, the triage appointment was conducted at that time. The claimant was

told she needed to turn in the medical documentation or attend WF/JET by September 8, 2009. (Department Exhibit 12)

9. On August 31, 2009, the claimant was mailed a JET Appointment Notice that scheduled her to attend WF/JET orientation on September 8, 2009. (Department Exhibit 14).

10. The claimant did not provide any medical documentation or attend WF/JET orientation. The claimant called DHS on September 14, 2009 and indicated she didn't attend WF/JET on September 8, 2009 because she was sick. The claimant had called WF/JET to indicate she was sick on that day (although she provided no medical documentation), but did not attend on September 9 through September 14, 2009 either. (Department Exhibit 17 – 18).

11. The claimant's FIP case was closed and the amount budgeted into the FAP case. The claimant was not disqualified from the FAP group as she is deferred due to having a child under the age of six. (Department Exhibit 19 – 21).

12. The claimant submitted a hearing request on September 15, 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.

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. In this case, the claimant does not dispute that she was noncompliant with WF/JET program requirements. The claimant admits that she did not attend WF/JET orientation.

The claimant indicates that she believes she had good cause for her 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 claimant indicates that she has medical issues that prevent her participation with WF/JET.

However, for the medical issues to be evaluated by the department, the claimant is required to provide appropriate medical documentation of any alleged disabilities or conditions preventing WF/JET participation. In this case, the claimant was given several opportunities to provide the necessary medical documentation. The claimant was sent a Verification Checklist on July 9, 2009, informing her of the medical documentation needed to defer her from WF/JET participation. Because the claimant contacted the worker and indicated she would need additional time to provide the documentation, the department mailed the claimant another Verification Checklist, requiring the documentation to be returned by August 3, 2009. When this deadline came and went, the claimant was offered one more chance to provide medical

documentation or comply with WF/JET requirements at the triage appointment. The claimant was told she could provide the medical documentation by September 8, 2009 or begin attending WF/JET by September 8, 2009 and no penalty would be instituted.

The claimant did not provide the medical documentation and she did not attend WF/JET. The claimant did call WF/JET on September 8, 2009, indicating she was sick. However, she did not provide any medical documentation of this illness or attend the remaining week of WF/JET.

In this case, the claimant was given multiple opportunities to provide the medical documentation to the department to allow them to determine any possible deferral from WF/JET participation. The claimant testified that she couldn't get records from Pine Rest and that she had multiple doctors to get records from, so she could not get the material in the time period allotted. However, the department gave the claimant two months and she still failed to provide any documentation. This seems to be a more than reasonable amount of time.

Thus, this Administrative Law Judge finds that the claimant was noncompliant with WF/JET program requirements without any documented good cause. The department properly terminated the claimant's FIP benefits.

Department policy indicates that when a claimant is sanctioned for FIP noncompliance, the FIP grant amount is budgeted into the FAP budget. In cases where a claimant is not deferred from FAP work participation, the noncompliant group member is also sanctioned from the FAP group. BEM 230B. In this case, the claimant does have a child under the age of six and the claimant was not sanctioned from the FAP group. Thus, the FAP budget information was correct and the benefit amount was correctly calculated.

It is noted that while the claimant indicated on her hearing request that the Medical Assistance was an issue, the MA benefits were not discontinued. Thus, there is no negative action to be in dispute for the MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides

1. 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.
2. The department properly included the FIP grant into the claimant's FAP budget and properly determined the claimant is deferred from sanctioning from the FAP group.

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: February 18, 2010

Date Mailed: February 23, 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 [REDACTED]

cc: [REDACTED]