

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: 2010-6072
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 10, 2010
Saginaw 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 February 10, 2010. The claimant personally appeared and provided testimony, along with her husband, [REDACTED].

ISSUE

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 October, 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. Both claimants, [REDACTED] [REDACTED] were mandatory WF/JET program participants for 35 hours per week. [REDACTED] worked ten hours each week toward their

participation requirement, which required the claimants to participate with WF/JET for 25 hours weekly.

2. Both claimants attended orientation on August 3, 2009. On August 3, 2009, [REDACTED] questioned WF/JET about school participation and he was told to come to the Career Manager's office and get a checklist of everything he would need to turn in to see if the schooling could be an approved activity. (Department Exhibit 21, 23).

3. The WF/JET orientation description that is given to all WF/JET participants indicates that college must be pre-approved by the Career Manager. The information also indicates that classroom times are from 8:30 to 4:30 Mondays through Fridays. (Department Exhibit 18 – 20).

4. On August 6, 2009, [REDACTED] was referred back to DHS because he had only attended 8.5 hours from August 3 – August 6, 2009. He had been a no call/no show on August 4 – 6, 2009. (Department Exhibit 17).

5. On August 10, 2009, [REDACTED] told a WF/JET staff member that she was attending school. The staff member informed her that the schooling was not on the computer system and told the claimant that it wouldn't be counted until she spoke with the Career Manager. (Department Exhibit 22).

6. On August 11, 2009, both claimants spoke with the Career Manager [REDACTED] indicated that he was not aware that he had to sign in each day for his job searching and that he thought his schooling would count toward his requirements, so he wouldn't have to attend job searching. (Department Exhibit 17).

7. [REDACTED] was a no call/no show for Modified Job Searching from August 11 through August 17, 2009. (Department Exhibit 13).

8. On August 17, 2009, [REDACTED] called and spoke with the WF/JET Case Manager. The claimant was informed that her schooling had not been approved and that she was in noncompliance because she had not been signing in for job searching. [REDACTED] reported that no one was present when she came to sign in. (Department Exhibit 13).

9. [REDACTED] was mailed a Notice of Noncompliance (DHS-2444) on September 29, 2009, informing him he was scheduled for a triage on October 9, 2009. (Department Exhibit 1 – 2).

10. [REDACTED] was mailed a Notice of Noncompliance on September 29, 2009, informing her that she was scheduled for a triage on October 9, 2009. (Department Exhibit 3 -4).

11. Both claimants attended the triage appointment. The claimants indicated that they were not told to get their schooling approved or to bring in schedules. The claimants also indicated that they did not know they were to sign in each day for job searching. The claimants were not given good cause by the department for the noncompliance. (Department Exhibit 5, 11).

12. The claimants were mailed a Notice of Case Action (DHS-1605) on October 12, 2009 that informed them the FIP case would close effective November 1, 2009 for noncompliance. (Department Exhibit 6 – 10).

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).

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 claimants dispute that they were noncompliant.

The claimants testified at the hearing that they did not get enough time to get their schooling approved prior to their triage. The claimants presented school schedules and letters indicating their course of study to this Administrative Law Judge. The letters are dated August 11, 2009 [REDACTED] and August 19, 2009 [REDACTED]. However, the claimants never presented these letters or school schedules to the Career Manager or at the triage appointment. The claimants participated in orientation on August 3, 2009. [REDACTED] was not placed into triage status until August 18, 2009. [REDACTED] was placed into triage status on August 6, 2009.

The case notes and the department testimony shows that the claimants were both told on numerous occasions that their schooling would not count unless they got it approved by the Career Manager. The orientation packet provided by the department does clearly indicate that any college classes must be pre-approved by the Career Manager. The claimants presented no testimony as to why they never went and saw the Career Manager to talk to her about possible WF/JET credit for schooling.

[REDACTED] testified that she should have been given “barrier hours” and that she didn’t know she had to sign in to receive the “barrier hours”. The department testified that “barrier hours” are hours the client would receive for taking her children to daycare or doctor’s

appointments during WF/JET participation. The claimant testified that she took her children to daycare and didn't receive credit for the hours. However, when this Administrative Law Judge questioned why the claimant was taking the children to daycare (as she had not completed any job searching hours), [REDACTED] testified that it was for school. The WF/JET representative testified that the hours would only be approved if the claimant was performing WF/JET requirements (such as job searching). The claimant never got her schooling approved, so the hours she took the children to daycare to attend school would not count either. The claimant indicated that she didn't know this. However, WF/JET representatives testified that this is covered in orientation.

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 claimants presented no testimony or evidence of any good cause reasons for their noncompliance.

This Administrative Law Judge does find that both claimants were noncompliant with WF/JET program requirements. The claimants were each told numerous times to go and talk to the Career Manager to get schooling approved. However, they did not do so. The claimants testified that they did not know they were to sign in to WF/JET. However, this is not credible as this topic is covered in orientation, which both claimants attended.

It appears that the claimants were both planning on counting their school hours toward their WF/JET program requirements, but never took the appropriate steps to get the schooling approved. The orientation packet clearly indicates that all claimants must get college activities approved from the Career Manager. Further, department documentation shows that the claimants were told several times that their schooling was not approved. Therefore, the

claimants are determined to be noncompliant with WF/JET program requirements. No evidence of good cause is presented.

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 claimants were both noncompliant with WF/JET program requirements without good cause and properly determined their FIP case should be terminated.

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: April 6, 2010

Date Mailed: April 15, 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 

cc:

