

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-11737
Issue No: 1038

[REDACTED]

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 16, 2011. 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 November 12, 2010 the Michigan Works Agency/Jobs Education and Training Program (JET) contractor requested a triage due to Claimant's failure to participate in employment and/or self-sufficiency related activities.
- (3) On November 15, 2010 Claimant was sent a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting for November 24, 2010.

- (4) On November 16, 2010 the Department case worker spoke with Claimant on the telephone and informed her of a new triage date on November 22, 2010 at 1:00 pm. At that time Claimant requested a phone triage.
- (5) On November 22, 2010 Claimant did not participate 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.
- (6) On November 23, 2010 Claimant was sent a Notice of Case Action (DHS-1605) stating that her Family Independence Program (FIP) case would be sanctioned.
- (7) On December 10, 2010 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-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 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 any alerts relating to rejected JET refunds and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST completion.

- Develop a Family Self-Sufficiency Plan (FSSP).

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 completion.

- Comply with activities assigned on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting related to assigned activities.
- 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.

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:

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

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.

In this case the Department alleges that Claimant was non-compliant by being absent without excuse from JET on 11/2/10-11/4/10 and missing the scheduled triage meeting on November 22, 2010. Claimant testified that she was late on 11/2/10 because she was in court and when she did arrive she was not allowed to go into the class. Claimant also testified that she did not miss any other days.

Claimant does not dispute that she did not participate in the triage meeting on November 22, 2010. The Department case worker testified that he called the number provided by Claimant and someone answered and told him Claimant was not there so he left a message for her. Claimant confirmed that the telephone number the Department had is a correct number. Claimant testified that she knew it was going to be at 1:00 pm and that she tried to call the DHS case worker several times but was unable to get through.

Testimony and Email evidence submitted by the Department case worker show that he was at work, expecting a call from Claimant and monitoring his telephone. The evidence in the record does not convince this Administrative Law Judge that Claimant's lack of participation in the triage meeting was caused by the Department. Claimant's failure to participate in the scheduled triage meeting is an incidence of non-compliance sufficient to validate the Department's sanction of her Family Independence Program (FIP) case. No further analysis is required to decide this case.

