

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201125955
Issue No: 1038
Case No: [REDACTED]
Hearing Date: June 29, 2011
Kent County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on March 29, 2011. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly terminate the claimant's Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant was a mandatory participant in the WF/JET program and was a FIP recipient. (Hearing Summary).
2. On January 27, 2011, the claimant reported that she obtained employment. (Department Exhibit 6).
3. On February 22, 2011, the claimant's employer indicated that the claimant was no longer employed and her last day was February 8, 2011. (Department Exhibit 5).

4. On February 22, 2011, the department mailed the claimant a letter to reengage with JET. (Department Exhibit 1). The reengagement letter indicated that the claimant was to make an appointment with her JET worker on February 28, 2011. (Department Exhibit 1).
5. On February 25, 2011, the claimant called her JET worker and agreed to provide documentation to show that she had 8 (eight) hours of job search activity. The claimant also confirmed her attendance for the February 28, 2011 appointment. (Department Exhibits 4-5).
6. The claimant did not call or show up for her reengagement appointment on February 28, 2011. (Department Exhibits 2-4).
7. On March 8, 2011, the department mailed the claimant a Notice of Noncompliance (DHS-2444) because the claimant failed to participate in required activity on March 4, 2011.¹ (Department Exhibit 9). Triage was scheduled for March 16, 2011. (Department Exhibit 9).
8. At triage on March 16, 2011, the department found that the claimant could not demonstrate good cause for noncompliance. (Department Exhibit 3). She did not provide any documentation or other evidence of good cause. (Department Exhibit 3).
9. The department mailed the claimant a Notice of Case Action on March 16, 2011, informing the claimant that her FIP program was being closed for at least 12 (twelve) months beginning April 1, 2011. (Department Exhibit 11).
10. The claimant submitted a hearing request on March 28, 2011, protesting the closure of her FIP. (Request for a Hearing).
11. This was the claimant's third noncompliance. (Department Exhibit 11).

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

¹ It should be noted that the March 16, 2011 Notice of Noncompliance (DHS-2444) was defective as it indicated the claimant failed to participate in required activity on March 4, 2011. There was no evidence that the claimant was notified that she had any JET obligations on March 4, 2011. However, the claimant was well aware that she was to appear on February 28, 2011 and she failed to do so.

Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy indicates:

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 BEM 230B), and the client did not have good cause for the noncompliance. BEM 233B, p. 1.

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.

There are two types of written notice: adequate and timely. BAM 220. A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested. BAM 220.

In this matter, the claimant contends that the department's Notice of Noncompliance dated March 16, 2011 is erroneous because it indicated she failed to participate in JET activities on March 4, 2011. This Administrative Law Judge finds that the March 16, 2011 is defective as there is no evidence the claimant had any JET obligations that she failed to meet on March 4, 2011. However, the defect in the Notice of Noncompliance was harmless error. There is no dispute that the claimant was on notice that she was to appear for her Jet appointment on February 28, 2011. The claimant does not dispute that she failed to make this mandatory appointment. The department provided the claimant with adequate notice that she had failed to attend JET activities on February 28, 2011 and that her failure would result in sanctions. There is no dispute that claimant received notice of the triage and was provided with an opportunity to demonstrate good cause prior to the March 16, 2011 negative action. This notice was both adequate and timely.

The next issue is whether or not the claimant has shown good cause for her failure to attend JET activities on February 22, 2011. 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 testified that she had good cause for her noncompliance due to homelessness. According to the claimant, she voluntarily left her living situation the day before her required JET appointment. Then the claimant indicated that she was forced to leave the home. By all accounts, the claimant was equivocal about the circumstances giving rise to her homelessness. Applicable policy defines as good cause "an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities." BEM 233A. Homelessness is included as an unplanned event. However, this Administrative Law Judge does not find the claimant's explanation credible and finds that her description of why she was homeless was not such that it would have prevented or significantly interfered with her ability to attend the previously scheduled JET activities.

Accordingly, the evidence shows the claimant has not provided any good cause for her noncompliance.

