

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: 2011-3473  
Issue No: 1038, 3029

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

**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 December 7, 2010. The claimant appeared and provided testimony, along with her boyfriend, Troy Fuller.

**ISSUES**

1. Did the department properly terminate and sanction the claimant's Family Independence Program (FIP) benefits for noncompliance with Work First/Jobs, Education and Training (WF/JET) requirements?
2. Did the department properly sanction the claimants from the Food Assistance Program (FAP) group, causing the FAP to close due to excess income?

**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 were referred to the WF/JET program to participate for a total of 35 hours weekly.
2. Both claimants were mailed Notices of Noncompliance (DHS-2444) on September 28, 2010, scheduling a triage appointment for October 5, 2010. (Department Exhibit 4 – 7)

3. The triage was held on October 5, 2010. Ms. Garvey attended with department staff members. The department found both claimants had been noncompliant with WF/JET requirements because Mr. Fuller had only been working nine hours weekly and Ms. Garvey was found to have falsified applications. No good cause was granted. (Department Exhibit 8, 15 – 16, 21 - 22)
4. On October 6, 2010, the department mailed the claimants a Notice of Case Action (DHS-1605) that indicated the FIP and FAP would be closed due to the WF/JET noncompliance. (Department Exhibit 39 – 44)
5. The claimant submitted a hearing request on October 19, 2010.

### **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 Program Reference Manual (PRM).

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 Bridges Administrative 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.

The department alleges that both claimants were noncompliant with WF/JET requirements. Mr. Fuller had reported to WF/JET staff that he was working full-time as a truck driver. WF/JET staff repeatedly requested verification of Mr. Fuller's income. On September 7, 2010, DHS provided verification of Mr. Fuller's income. The verification averaged out to nine hours per week. Ms. Garvey was found by the department to have falsified job logs. WF/JET staff called several employers that Ms. Garvey indicated she had applied with and only one reported having a resume on file for her.

The claimants dispute that they were noncompliant. Mr. Fuller testified that he worked more hours than his employer gave him credit for. However, the paycheck stubs that were provided to DHS are the only documentation that was received. Further, both claimants made statements indicating that Mr. Fuller was unable to work many hours because the truck he was supposed to drive broke down. The claimants presented no reason why Mr. Fuller could not participate with WF/JET to make his hourly requirements that were not being met by his employment.

Ms. Garvey testified that she did not falsify any job logs. Ms. Garvey submitted a handwritten note with the name of the Rite Aid store and district manager on it and a statement purportedly from CH, an assistant manager at Family Dollar that indicates Ms. Garvey submitted an application on September 19, 2010. However, when the WF/JET staff member called eleven other employers that the claimant indicated that she had applied at, none of these had applications for her. Ms. Garvey was unable to provide any explanation for the lack of applications with these employers.

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. Mr. Fuller provided no good cause for his failure to get in his required amount of hours. Ms. Garvey presented some doctor's slips from April and May, 2010 that listed some walking/standing limitations. However, Ms. Garvey provided no medical documentation to excuse her from meeting her WF/JET requirements for the noncompliance period.

Thus, this Administrative Law Judge finds that the claimants were noncompliant with WF/JET program requirements without good cause. The department properly closed their FIP case for the noncompliance.

The department also properly sanctioned both claimants from the FAP group as neither was deferred from FAP work requirements. This brought the program group down to two members and caused the program group to be excess income to receive FAP.

### **DECISION AND ORDER**

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

1. The department properly terminated the claimants' Family Independence Program (FIP) benefits for noncompliance with WF/JET requirements.
2. The department properly sanctioned the claimants from the Food Assistance Program (FAP) for the WF/JET noncompliance, which caused the FAP benefits to close due to excess income.

Accordingly, the department's actions are UPHeld. SO ORDERED.

/s/

Suzanne L. Morris  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 2/1/11

Date Mailed: 2/1/11

**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.

[REDACTED]