

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-37345
Issue No: 1038
Case No: [REDACTED]
Hearing Date:
November 9, 2011
Monroe County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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, an in-person hearing was held on November 9, 2011. The claimant, [REDACTED], and her attorney, [REDACTED] appeared and provided testimony.

ISSUE

Did the department properly terminate and sanction 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. Claimant applied for FIP on April 5, 2010. At the time of application, she claimed disability lasting longer than 90 days.
2. On November 10, 2010, Claimant's medical packet was prepared and sent to the Medical Review Team (MRT).
3. On December 17, 2010, MRT denied Claimant's application for a medical deferment, finding Claimant was capable of performing her past relevant work as a clerk in accord with 20 CFR 416.920(E). The MRT Assessment for JET Participation Project report shows Claimant was found Not Disabled – Work Ready with Limitations. The Lifting/Carrying limitations show Claimant is capable of lifting and carrying up to 25 pounds on third to two thirds of the day, and 50 pounds one third of the day. Claimant was

also found able to sit about 6 hours in an 8-hour day and to stand or walk for 6 hours out of an 8 hour day. (Department Exhibits 11– 14)

4. On May 25, 2011, the department mailed Claimant a JET Appointment Notice (DHS-4785), for her WF/JET orientation scheduled for June 6, 2011. The appointment notice included documentation informing Claimant that the Medical Review Team had determined that she was not disabled, but could work with limitations. (Department Exhibit 3).
5. Claimant submitted a hearing request on June 3, 2011.
6. On June 6, 2011, Claimant did not attend WF/JET. (Department Exhibit 8)
7. On September 22, 2009, Claimant's MRI Lumbar Spine without Gadolinium and Lumbar Spine Radiograph showed a Grade 1 anterior spondylolisthesis L5 on S1 with concern for associated pars defect. Degenerative disc disease was seen involving the L3-L4, L4-L5 and L5-S1 levels. Disc disease was asymmetric in a left distribution with varying degrees of neural foramen encroachment. (Department Exhibits 37-38).
8. On January 5, 2010, Claimant's MRI Cervical Spine, Cervical Spine Radiographs showed the dominant finding was a moderate-large focal right paracentral disc extrusion/herniation at C6-C7 causing moderate effacement of the right paracentral thecal sac, borderline AP dimensional stenosis and encroachment upon the right exiting neural canal. There was mild abutment of the right C7 nerve root. Mild circumferential disc bulge and disc desiccation at C5-C6 minimally effacing the left paracentral thecal sac. Additionally, at this level there was minimal left-sided uncovertebral joint arthritis minimally encroaching upon the left exiting neural canal without spinal stenosis or nerve root impingement. Mild torticollis with side-being to the left and straightening of the cervical lordosis coinciding to cervical myositis. (Department Exhibits 35-36).
9. On May 3, 2010, Claimant's Medical Examination showed she was diagnosed with paracentral disc herniation at C6-C7, degenerative disc disease, and Grade 1 anterior spondylolisthesis at L5-S1. The musculoskeletal exam showed Claimant had decreased range of motion of the cervical, thoracic and lumbar spine. The doctor found Claimant was limited to never lifting or carrying less than 10 pounds, unable to use either foot or leg to operative foot/leg controls and able to stand or walk less than 2 hours in an 8-hour work day. Based on the exam, the doctor found Claimant's limitations were expected to last more than 90 days, that she would need lifetime treatment, and that she was unable to work at her usual job or any other. (Department Exhibits 30-34).

10. On July 10, 2010, Claimant was referred to for a Mental Status Examination for the Disability Determination for Social Security Administration. Claimant presented with symptoms of mild depression secondary to her general medical condition and chronic pain. Claimant was cooperative and polite and did not seem to be malingering or exaggerating symptoms. She denied feeling suicidal or overwhelmed, having psychotic symptoms or unusual thoughts or behaviors. Her sleep was disturbed by pain. The psychologist found that Claimant's depression and anxiety would not prevent her from doing work related activities at a sustained pace or appropriately interacting in a social or work environment. The prognosis was fair to guarded. (Department Exhibits 15-17).

11. On July 10, 2010, Claimant was seen by an internist for a Disability Determination for Social Security Administration. The doctor found that Claimant had a disc herniation at C6-C7, causing foraminal stenosis on the right side and impingement of the C7 nerve root. Surgical resection of the discs through the anterior cervical exposure was recommended. She also had pain aggravated by standing, stooping, squatting, lifting, bending, pushing, pulling, reaching and climbing stairs. She had pain in the cervical spine with paresthesias of the right upper extremity. Impression: Claimant has a history of chronic back and neck pain and has degenerative disc disease at the cervical spine level. She is being followed by a neurosurgeon at the University of Michigan Hospital. Surgery was declined. She wears a soft cervical collar for pain management and support. She has a history of chronic depression and states that she is taking Xanax for the problem. She has a history of kidney stones and has been admitted on multiple occasions. She has a history of migraine headaches and she does take pain medications as needed for the problem. She has a history of radiculopathy of the right upper extremity related to the cervical disc disease. Based on the exam, the doctor found that Claimant should avoid and would have difficulty with repetitive and heavy lifting, bending, pushing and pulling. In addition, the doctor found Claimant may need ongoing mental health care as well. (Department Exhibits 19-26).

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 Mich Admin Code, Rules 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 Reference Tables Manual (RFT).

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.

Claimant is disputing the department's determination that would close her FIP case for noncompliance with WF/JET program requirements. Claimant contends that she should be granted a medical deferment based on her disability lasting longer than 90 days and she should not have been classified as a Work-Eligible-Individual (WEI) and referred to WF/JET.

Department policy directs the department to temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities. BEM 229. This policy specifically notes that clients should not be referred for orientation and the work participation program until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated.

Further, BEM 230A indicates that a person may be deferred based on incapacitation due to injury, physical illness or mental illness. BEM 230A provides that statements from an MD/DO that the person is unable to work or the submission of a DHS-54A, Medical Needs; DHS-49, Medical Examination Report; DHS-49-D, or Psychiatric/Psychological Examination Report are proper verifications.

In this case, the first doctor examined Claimant in May 2010, and found that her limitations were expected to last more than 90 days, and that she was unable to work at her usual job or any other. The second doctor in July 2010 found that Claimant was unable to do repetitive and heavy lifting, bending, pushing and/or pulling. Thus, this Administrative Law Judge is unable to find that the department has produced sufficient evidence to show that Claimant is capable of engaging in employment-related activities (WF/JET), based on the medical documentation presented. Since department policy indicates that a loss of deferral is not a negative action, this Administrative Law Judge will address the alleged noncompliance. This Administrative Law Judge finds that Claimant has good cause for her noncompliance with WF/JET program requirements, as the client is physically or mentally unfit for the job or activity, as shown by medical evidence that indicates disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined the claimant's Family Independence Program (FIP) benefits should be terminated for noncompliance with WF/JET requirements. The department's determination is REVERSED.

The department shall not terminate claimant's FIP benefits and shall ensure claimant receives or has received monthly FIP benefits, if otherwise eligible. SO ORDERED.

/S/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/22/11

Date Mailed: 11/22/11

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.

VLA/ds

■ [REDACTED]