

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

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 September 20, 2011. Claimant personally appeared and provided testimony.

**ISSUES**

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. At all relevant times, Claimant was an active FIP recipient and her household group member/boyfriend ([REDACTED]) was a mandatory WF/JET participant. (Department Exhibit 10).
2. As a condition of eligibility, Claimant's group member [REDACTED] was required to comply with JET program activities, including but not limited to attending required classes. (Department Exhibits 10-12).
3. On May 12, 2011, [REDACTED] completed the JET intake interview and was assigned to [REDACTED] beginning May 16, 2011 at 8:30a.m. (Department Exhibit 11).

4. On May 16, 2011, [REDACTED] reported to intake at [REDACTED] but he left early without permission because he purportedly had a conflict with his "school schedule." [REDACTED] was scheduled for a make-up intake on May 20, 2011. (Department Exhibit 10).
5. On May 20, 2011, [REDACTED] attended his [REDACTED] intake appointment and was scheduled to meet with JET worker [REDACTED] immediately after the appointment, but he failed to do so. [REDACTED] was scheduled for re-engagement. (Department Exhibit 11).
6. On June 2, 2011, the Department mailed [REDACTED] a re-engagement letter instructing him to meet with his JET worker on or before June 7, 2011 and to provide documentation for his absences since May 21, 2011. (Department Exhibit 11).
7. On June 7, 2011, [REDACTED] failed to report for re-engagement. (Department Exhibit 11).
8. On June 20, 2011, the Department mailed [REDACTED] a Notice of Noncompliance (DHS-2444) for failing to participate in required activity. (Department Exhibits 8 & 9). Per the DHS-2444, [REDACTED] was scheduled for triage on June 29, 2011 at 2:00p.m. (Department Exhibits 8 & 9).
9. On June 29, 2011, [REDACTED] attended a phone triage and verbally agreed to sign a First Noncompliance Letter (DHS-754) then agreed to re-engage with JET on June 30, 2011. (Department Exhibit 4).
10. On June 30, 2011, [REDACTED] reported to JET but refused to sign the DHS-754 and stated that he chose to no longer attend JET. (Department Exhibit 4).
11. On June 30, 2011, the Department mailed Claimant a Notice of Case Action (DHS-1605) because [REDACTED], her group member, failed to attend required JET-related activity. (Department Exhibits 2 & 3). This is the first FIP noncompliance. (Department Exhibits 2 & 3).
12. Claimant requested a hearing on August 10, 2011. (Request for a Hearing).

### **CONCLUSIONS OF LAW**

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative

Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

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 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. BEM 233A. The department's stated goal is to bring the client into compliance. BEM 233A. The department recognizes that noncompliance may be an indicator of possible disabilities. BEM 233A. In this regard, the department does explore whether the client is confronted by any barriers. BEM 233A.

With regard to FIP, the department requires its clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 233 A. The department's focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. BEM 233A. But there are consequences for a client who refuses to participate, without good cause. BEM 233A.

With regard to 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. BEM 233A.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A. 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 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. BEM 233A. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A.

Per department policy, 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. BEM 233A.

- . The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client. BEM 233A.
- . 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.
- . 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. BEM 233A.
- . The care is appropriate to the child's age, disabilities and other conditions. BEM 233A.
- . The total commuting time to and from work and child care facilities does not exceed three hours per day. BEM 233A.
- . 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.
- . The child care is provided at the rate of payment or reimbursement offered by DHS. BEM 233A.
- . 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. BEM 233A.
- . The employment involves illegal activities. BEM 233A.
- . The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, religious beliefs, etc. BEM 233A, p. 4.
- . 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. BEM 233A.
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- . The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit. BEM 233A.
  - . The client has a long commute where the 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.

The client is eligible for EFIP unless the noncompliance is because he or she quit a job, was fired or voluntarily reduced hours of employment. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. 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. BEM 233A.

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. BEM 233A. The department policy requires the department to coordinate a local process to

notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the department requires its staff to offer a phone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A. When a phone triage is conducted for a first noncompliance and the client agrees to comply, the department shall complete the First Noncompliance Letter (DHS-754). BEM 233A.

The department must determine good cause based on the best information available during the triage and prior to the negative action date. BEM 233A. Good cause may be verified by information already on file with DHS or MWA. BEM 233A. 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. BEM 233A. DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking. BEM 233A. Clients not participating with JET must be scheduled for a “triage” meeting between the FIS and the client. BEM 233A. This does not include applicants. BEM 233A, p. 7.

If the client establishes good cause within the negative action period, the department shall impose a penalty. BEM 233A. The department must send the client back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

If the client does not provide a good cause reason within the negative action period, the department is required to determine good cause based on the best information available. BEM 233A. If no good cause exists, the department will allow the case to close. BEM 233A. If good cause is determined to exist, the department should delete the negative action. BEM 233A.

- . The department will 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.





**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.

CAP/ds

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