

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

IN THE MATTER OF:



Reg No. 20111373
Issue No. 1038
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: November 10, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, November 10, 2010. The claimant personally appeared and testified on her own behalf.

ISSUE

Did the department properly cancel the claimant's Family Independence Agency (FIP) benefits for failure to comply with Work First/JET activities?

FINDINGS OF FACT

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

1. The claimant was a recipient of FIP benefits that required her to work or look for work for 40 hours per week.
2. On August 11, 2010, the claimant's Work First/JET worker documented in the case notes that the claimant has not attended JET programming since August 6, 2010. The claimant was having transportation and housing concerns. The Work First/JET worker explained to the claimant where the closest bus stop to her house was so she can utilize the bus service until her vehicle was replaced. The claimant was scheduled to meet with her Work First/JET worker on August 13, 2010 at 10:00 a.m. to provide all documentation and job leads at that time. In addition, housing concerns were going to be discussed at this meeting. The Work First/JET worker

discussed the importance of returning to the programming so that the claimant's file can remain open at Work First/JET. (Department Exhibit 5)

3. On August 12, 2010, the claimant returned to Work First/JET programming and signed a PSF for unexcused absences due to transportation problems where she states that she now has reliable transportation in place and she was informed that she needed to be in compliance with the Work First/JET program rules in the future. (Department Exhibit 4-5)
4. On August 24, 2010, the claimant was informed that her job search requirements where that if she was working less than 30 hours per week where she needed to provide documentation on August 14, 2010 and proof of EDC for her job at [REDACTED]. The claimant was instructed that she had to attend orientation and continue participating in Work First/JET classes and job search activities until employment started. (Department Exhibit 3-4)
5. On August 31, 2010, the Work First/JET worker documented that the claimant had unexcused absences on August 23, 2010, August 25, 2010, and August 27, 2010. On August 23, 2010 and August 25, 2010, the claimant's assignment was to submit job search activities by 2:00 p.m. The claimant stated that she did not attend due to viewing apartments, but the claimant could have made arrangements to report around this activity. The claimant also did not have any documentation of her apartment viewing. For August 25, 2010, the claimant stated she did not attend the mandatory job fair because she did not know where it was where this information was posted a week advance, was announced during classes, and flyers were available. In addition, the claimant did not provide any job search activities for the week of August 23, 2010 through August 27, 2010. The claimant was informed that her file would be closed with [REDACTED] since she was already on PSF. The claimant reported that her job with [REDACTED] was still pending with no start date known at this time. (Department Exhibit 2-3)
6. On September 1, 2010, the claimant's case was referred back to her department caseworker where the claimant has been on PSF since August 12, 2010, but since then she has had unexcused absences on August 19, 2010, August 23, 2010, August 25, 2010, August 27, 2010, and August 30, 2010. The claimant has also not submitted job search activities since August 18, 2010. The claimant has been informed that her file will close with [REDACTED] and returned to CSU due to violation of PSF. (Department Exhibit 2)

7. On September 1, 2010, the department caseworker sent the claimant a notice that a triage request date was scheduled for September 15, 2010 at 2:00 p.m. and that was the first or second time member of your group has been noncompliant for the claimant to provide a good cause reason why she had not participated in Work First/JET activities, which would require that her case close for a minimum of 3 months. (Department Exhibit 8-9)
8. On September 14, 2010, the department caseworker received a telephone message from the claimant that she had recently moved and just received the triage notice. (Department Exhibit 10-11)
9. On September 14, 2010, the department caseworker returned the claimant's call and left a message for the claimant to attend the required triage or her FIP case would be closed. (Department Exhibit 10-11)
10. On September 15, 2010, the claimant was a no call, no show for her triage. (Department Exhibit 12)
11. On September 15, 2010, the department caseworker sent the claimant notice that because she did not attend her triage on September 15, 2010 at 2:00 p.m. that the claimant's FIP case should be closed for 3 months from October 1, 2010 through December 31, 2010 because you or a group member failed to participate in employment and/or self-sufficiency related activities or you quit a job, were fired, or reduced your hours of employment without good cause. You may want to reapply during the last month of the penalty period. Also, the claimant's FAP benefits would be decreased subtracting the claimant as a household member. (Department Exhibit 13-15)
12. On October 4, 2010, the department received a hearing request from the claimant, contesting the department's negative action.
13. During the hearing, the claimant stated that she moved on September 3, 2010 and notified the department on September 14, 2010. The claimant stated she did not have a phone until September 13, 2010. The claimant stated she did not tell the department caseworker that she had a doctor's appointment the same day of the triage.
14. During the hearing, the claimant stated that on August 23, 2010, August 25, 2010, and August 27, 2010, the claimant was meeting with the landlord, but has not provided any documentation.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The department's program eligibility manuals provided the following relevant policy statements and instructions for caseworkers:

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 PEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized.

See PEM 233B for the Food Assistance Program (FAP) policy when the FIP penalty is closure. For the Refugee Assistance Program (RAP) penalty policy, see PEM 233C. PEM 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.
 - ..
 - .. 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. PEM 233A, pp. 1-2.

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:

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

Exception: Meeting participation requirements is NOT good cause for refusing suitable employment, unless the employment would interfere with approved education and training.

Do NOT penalize applicants or member adds that refused employment more than 30 days prior to the date of application or date of member add. PEM 233A, pp.2-3.

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 on the DHS-71, Good Cause Determination and the FSSP under the "Participation and Compliance" tab.

See "School Attendance" PEM 201 for good cause when minor parents do not attend school.

Employed 40 Hours

Client Unit

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. PEM 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. PEM 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. PEM 233A, pp.4-5.

NONCOMPLIANCE PENALTIES AT APPLICATION

Noncompliance by a WEI while the application is pending results in **group** ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application **or** while the application is pending must have benefits delayed. See “**Benefit Delay for Refusing Employment**” below.

Benefit Delay for Refusing Employment

If a WEI applicant refuses suitable employment without good cause while the FIP application is pending (**or up to 30 days before the FIP application date**), approve FIP benefits no earlier than the pay period **following** the pay period containing the 30th day after the refusal of employment. Record the good cause determination on the DHS-71, Good Cause Determination.

If a WEI member add refuses suitable employment without good cause while the FIP member add is pending, close the FIP for the minimum number of penalty months. PEM 233A, p. 5.

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.

Work Around For Noncompliant Member Adds

You must follow the instructions below when a member add is **noncompliant** with JET prior to being added to the FIP case:

- . Schedule a triage (DHS-2444) with the noncompliant member and send a manual DHS-176, Client Notice, to the grantee for negative action/closure due to noncompliance. Use the language for either negative action code “405” or “407”.
- . Hold the triage.
- . If good cause exists, no further action is required; add the member.
- . Central office will immediately close the case on the closure date or pend for the date on the DHS-176. PEM 233A, pp. 12-13.

TRIAGE

JET participants will not be terminated from a JET program without first scheduling a “trriage” 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. PEM 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. PEM 233A, pp. 10-11.

Medicaid

Termination of FIP for noncompliance with employment-related activities **does** not mean ineligibility for Medicaid. PEM 233A, p. 11.

REAPPLICATION AND REINSTATEMENT

There is no minimum sanction period on applications denied due to noncompliance. If the noncompliance was for an applicant refusing **employment**, see "Benefit Delay for Refusing Employment". Clients may reapply at any time. All other penalties for noncompliance must be in effect for the minimum number of months of the penalty.

In the instant case, this Administrative Law Judge finds that the claimant did have notice that she was supposed to participate in Work First/JET activities for at least 30 hours per week and/or to look for employment or work for 30 hours per week. The claimant was currently under PCF and had additional unexcused absences on August 19, 2010, August 23, 2010, August 25, 2010, August 27, 2010, and August 30, 2010. Although the claimant stated that she was searching for housing she never provided the Work First/JET worker with any written documentation.

In addition, the claimant failed to attend her triage meeting on September 15, 2010. The claimant stated that she had moved on September 3, 2010 and called to notify the department on September 14, 2010 but did not tell the caseworker that she had a doctor's appointment the same day of the triage nor did she provide written documentation of a doctor's appointment. The claimant did not attend her triage meeting as required on September 15, 2010 which resulted in her FIP case closing and her FAP case being reduced as a result of her noncompliance with Work First/JET requirements.

Therefore, this Administrative Law Judge determines that the department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that the claimant did not participate in Work First/JET activities on August 19, 2010, August 23, 2010, August 25, 2010, and August 27, 2010, and August 30, 2010 and failed to attend her required triage meeting on September 15, 2010, which resulted in her FIP being closed and her FAP benefits being reduced as a result of removing the claimant as a part of the household group, where the sanction would last for 3 months from October 1, 2010 to December 31, 2010.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established its case by a preponderance of the evidence that the department correctly closed the claimant's FIP benefits and reduced the claimant's FAP benefits based upon the claimant's failure to participate in Work First/JET activities and failure to provide a good cause reason at her triage on September 15, 2010.

Accordingly, the department's decision is **AFFIRMED**.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: January 3, 2011

Date Mailed: January 4, 2011

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.

CGF / vc

cc:

