

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201132520  
Issue No: 1038  
Case No: [REDACTED]  
Hearing Date: July 19, 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 July 19, 2011. The claimant personally appeared and provided testimony.

**ISSUE**

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?

**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 actively receiving FIP and was a mandatory participant in the WF/JET program. (Department Exhibit 1, Hearing Summary).
2. On February 11, 2011, the department mailed the claimant a Jobs, Education, and Training Appointment Notice (DHS-4785) directing her to attend a JET orientation appointment on February 23, 2011.<sup>1</sup> (Department Exhibit 3).
3. On February 23, 2011, the claimant did not attend the JET orientation appointment. (Department Exhibit 8).

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<sup>1</sup> The DHS-4785 also indicated that because the claimant's baby is now 3 months old, she must now attend the JET program.

4. On March 1, 2011, the department mailed the claimant a Notice of Noncompliance (DHS-2444). (Department Exhibit 4). Triage was scheduled for March 9, 2011 and her deadline to demonstrate good cause for noncompliance was March 11, 2011. (Department Exhibit 4).
5. On March 9, 2011, the claimant attended triage but was not able to show good cause. The claimant did, however, sign a First Noncompliance Letter (DHS-754).
6. On March 10, 2011, the department sent the claimant a Jobs, Education and Training Appointment Notice (DHS-4785) which required the claimant to attend JET on March 21, 2011. (Department Exhibits 6 & 7).
7. On March 16, 2011, the claimant's treating physician signed a Medical Needs-JET form (DHS-54-E) indicating that the claimant is diagnosed with pachyonychia congenita<sup>2</sup> with multiple painful abscesses all over her body and is unable to work without limitations. (Medical Needs-JET form, DHS-54-E).
8. The claimant did not attend JET on March 21, 2011. (Department Exhibit 8).
9. The department mailed the claimant a Notice of Case Action (DHS-1605) and closed the claimant's FIP on March 22, 2011 for a period of 3 (three) months beginning in May 2011. (Department Exhibits 10-12). This is the claimant's first noncompliance. (Hearing Summary).
10. The claimant requested a hearing on May 3, 2011. (Request for a Hearing).

### **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).

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<sup>2</sup>Pachyonychia congenita is a rare skin disorder with symptoms that include thickening of the nails, as well as painful blisters and lesions all over the body. See [http://en.wikipedia.org/wiki/Pachyonychia\\_congenita](http://en.wikipedia.org/wiki/Pachyonychia_congenita).

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.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. BEM 230A. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. BEM 230A. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A.

When a client requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements. BEM 230A. A disability as defined above that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. BEM 230A. A client may disclose a disability at any time. BEM 230A. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. BEM 230A.

The department should be alert to undisclosed or unrecognized disabilities and offer screening and assessment as appropriate. BEM 230A. The department shall help clients understand that DHS can only offer accommodations if a disability is verified. BEM 230A.

When the department receives information provided by an appropriate source that indicates the need for reasonable accommodation, the department must do the following:

- Obtain a DHS-54A, Medical Needs or the DHS 54E, Medical Needs-JET, form from a qualified medical professional listed on the form. BEM 230A.
- Consult Michigan Rehabilitation Services (MRS) if additional information about appropriate accommodations is needed or when you need advice. BEM 230A.
- Document the accommodation in the *Other MWA referral comments* section of the *Employment Services - Details* screen, and on the Family Self-Sufficiency Plan (FSSP). BEM 230A.

Modifications or extra help may include, but are not limited to the following:

- Reduced hours of required participation.
- Extended education allowances including more than 12 months

allowed for vocational education.

- Extended job search/job readiness time limit.
- Participation in MRS in lieu of other employment services. BEM 230A.

Justification for a plan including reasonable accommodation is documented in the client's FSSP and the Individual Service Strategy (ISS with the MWA). BEM 230A. When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours in which they are engaged even if they do not meet federal work requirements. BEM 230A.

This Administrative Law Judge finds that the claimant was noncompliant with WF/JET program requirements when she failed to attend JET orientation on February 23, 2011 and then later again when she failed to attend JET again on March 21, 2011. The client signed a noncompliance letter on March 9, 2011 which indicated that she understood the decision that she was noncompliant without good cause. At this time, the claimant did not give a reason for her noncompliance and was provided with another opportunity to attend JET on March 21, 2011. However, the claimant, on March 16, 2011, provided a Medical Needs-JET form (DHS-54-E) signed by her treating physician that the claimant has been diagnosed with pachyonychia congenital (a painful skin disorder).

This Administrative Law Judge finds that this DHS-54-E form was provided before the March 21, 2011 JET appointment. When the claimant provided the DHS-54-E, she has met the good cause requirement or, at the very least, has properly notified the department that she may have a disability or may require accommodations in order to participate in JET activities. BEM 230A requires that the department consider the client requests for accommodations to participate in assigned activities on a case-by-case basis.

Policy requires the department to "make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities." BEM 230A. Policy specifically states "failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A. Here, there is no indication that the department took the proper steps to accommodate the claimant after she provided a proper DHS-54-E form indicating a possible disability, illness or medical problem. Because BAM 230A provides that a client may disclose a disability at any time, the department should not have closed the claimant's FIP without first taking the appropriate steps to verify the alleged disability. The claimant's failure to disclose at an earlier time does not prevent her from claiming a disability or requesting an accommodation in the future. BEM 230A.

Accordingly, this Administrative Law Judge finds the department improperly closed the claimant's FIP for failure to participate in employment or JET activities. 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 has shown good cause as she shown that she has a medical condition or illness (pachyonychia congenita) that requires verification and, if properly verified, accommodation to participate in JET activities.

**DECISION AND ORDER**

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

The department is hereby ordered to do the following:

- Reinstatement the claimant into the WF/JET program,
- Verify whether the claimant has a disability that requires reasonable accommodation as defined by BEM 230A.
- If it is found that the claimant does have a disability-related need or other limitations, the department shall provide the claimant with an effective and meaningful opportunity to benefit from WF/JET with a reasonable accommodation or other modification to the program requirement.

It is SO ORDERED.

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/s/

C. Adam Purnell  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: August 1, 2011

Date Mailed: August 1, 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.

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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/cr

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