

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: 20119360
Issue No: 1025
Case No: [REDACTED]
Hearing Date: March 8, 2011
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on November 17, 2010. After due notice, a telephone hearing was held on Tuesday, March 8, 2011.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Family Independence Program (FIP) eligibility?

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 an ongoing Family Independence Program (FIP) recipient.
2. The Department referred the Claimant to the Jobs, Education, and Training (JET) program as a condition of receiving FIP benefits, after having been previously deferred from the program.
3. On October 25, 2010, the Claimant was noncompliant with the JET program when she failed to attend her JET orientation.
4. The Department held a triage meeting on November 17, 2010.
5. The Claimant identified [REDACTED] as the father of her daughter ([REDACTED]).

6. On February 14, 2010, the Family Support Unit of the Ingham County Prosecuting Attorney's office and the Department requested the Claimant to submit to genetic testing to verify the father of her daughter [REDACTED].
7. On May 10, 2010, [REDACTED] signed an Affidavit of Parentage, on which he professed to be the father of the Claimant's daughter [REDACTED].
8. On June 14, 2010, a genetic paternity test identified another person [REDACTED] as the likely father of the Claimant's daughter [REDACTED].
9. The Claimant continues to refuse to submit her daughter to further genetic testing.
10. On November 15, 2010, the Department notified the Claimant that it would terminate her FIP benefits for failure to cooperate in establishing paternity or securing child support.
11. The Department received the Claimant's request for a hearing on [REDACTED] protesting the termination of her FIP benefits.
12. On March 7, 2011, [REDACTED] signed an affidavit, which states that he no longer believes that he is the father of the Claimant's daughter [REDACTED].

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), Reference Table Manual (RTM), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by DHS when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments will be covered by the JET case manager when a mandatory JET participant is referred at application. PEM 229, p. 1.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that

meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) through the Michigan Works Agencies (MWAs). The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1.

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).
 - Provide legitimate documentation of work participation.
 - Appear for a scheduled appointment or meeting related to assigned activities.
 - 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.

The Department is required to send a DHS -2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. PEM 233A, p. 9

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. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. PEM 233A, p. 4, 5

Good cause should be determined 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. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. PEM 233A, p. 9

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 not less than 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 not less than 3 calendar months.
- For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.
- The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. PEM, Item 233A.

Noncompliance, without good cause, with employment requirements for FIP/RAP(SEE PEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. PEM 233b, p. 1 The FAP group member should be disqualified for noncompliance when all the following exist:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP/RAP employment requirements, and
- The client is subject to a penalty on the FIP/RAP program, and
- The client is not deferred from FAP work requirements, and
- The client did not have good cause for the noncompliance. PEM 233B, p.2

The Department should budget the Last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the first two noncompliances or 12 months for the third and subsequent noncompliances) after the FIP case closes for employment and/or self sufficiency-related noncompliance. The Last FIP grant amount is the grant amount the client received immediately before the FIP case closed.

The Claimant was an ongoing Family Independence Program (FIP) recipient. On October 25, 2010, the Claimant's deferral from the JET program had ended and the Department scheduled her for a JET orientation. The Claimant was noncompliant with the JET program when she failed to attend her JET orientation. The Department held a triage meeting on November 17, 2010, where the Claimant was given the opportunity to establish good cause for her noncompliance. The Department did not find good cause, and sanctioned the Claimant's FIP benefits.

The Claimant argued that a lack of transportation was a barrier to her participation in the JET program. The Claimant testified that she does not have access to a reliable vehicle of her own and must transport her children to day care and school by bus, which prevents her from attending JET program activities.

Good cause for no transportation can be established where the client requested transportation services from the Department prior to case closure and reasonably priced transportation is not available to the client. BEM 233A.

The Department's representative testified that the Claimant has access to public transportation near her home, and that transportation should not be a barrier.

The Claimant testified that a lack of suitable childcare for her children was a barrier to her participation in the JET program. The Claimant testified that her children have special needs, and a lack of suitable day care prevented her from attending JET program activities.

Good cause for a lack of suitable childcare can be established where the client requested childcare services from the Department prior to case closure for noncompliance and childcare is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site. BEM 233A.

The Department's representative testified that suitable day care was available for the Claimant's children. The Department's representative testified that the Claimant did request assistance with obtaining day care, and that she had informed the Department that she would not request assistance from the Department with childcare.

The Claimant testified that she uses public transportation to get to her appointments. The Claimant testified that she must spend over two hours on buses in order to get her children to school, and that this prevents her from attending the JET program.

Good cause for a long commute can be established where total commuting time exceeds two hours per day, not including time to and from childcare facilities, or three hours per day, including time to and from childcare facilities. BEM 233A.

The Department failed to address whether the Claimant's commute separately from her lack of transportation and whether this was a barrier to her participation in the JET program. Therefore, the Department has failed to establish that the Claimant was noncompliant with the JET program without good cause.

The Claimant identified W.R. as the father of her daughter [REDACTED]. On February 14, 2010, the Family Support Unit of the Ingham County Prosecuting Attorney's office and the Department requested the Claimant to submit to genetic testing to verify the father of her daughter [REDACTED]. On May 10, 2010, [REDACTED] signed an Affidavit of Parentage, on which he professed to be the father of the Claimant's daughter [REDACTED]. On June 14, 2010, a genetic paternity test identified another person [REDACTED] as the likely father of the Claimant's daughter [REDACTED]. On March 7, 2011, [REDACTED] signed an affidavit, which states that he no longer believes that he is the father of the Claimant's daughter [REDACTED].

The Claimant testified that she refused to submit her daughter to genetic testing as requested by the Department and the Ingham County Prosecuting Attorney's office because it is unnecessary. The Claimant testified that the affidavit signed by [REDACTED] on May 10, 2010, makes further genetic testing unnecessary.

Families are strengthened when children's needs are met. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department including the Office of Child Support (OCS), the Friend of the Court (FOC)

and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255.

The head of household and the parent of children must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. BEM 255.

Failure to cooperate without good cause results in ineligibility for benefits. Bridges will close or deny benefits when a child support non-cooperation record exists and there is no corresponding comply date. BEM 255.

In this case, the Department and the Family Support Unit of the Ingham County Prosecuting Attorney's office requested that the Claimant submit her daughter to genetic testing. The Claimant refused to submit to this testing because she believed it was unnecessary to the purported father's signing of the affidavit of parentage form.

However, since [REDACTED] signed the affidavit of parentage form, additional information has surfaced that creates significant doubt as to the accuracy of the affidavit. In light of new information that [REDACTED] is the likely father of the Claimant's daughter [REDACTED] the Department's request that the Claimant submit her daughter to genetic testing is reasonable. The Department had an interest in establishing paternity and/or obtaining child support on behalf of children for whom they receive assistance. Since the Claimant does receive FIP assistance, the Department was justified to request that the Claimant submit her daughter to genetic testing. Because the Claimant refused to cooperate with the Department and the Family Support Unit of the Ingham County Prosecuting Attorney's office, the Department was acting properly when it terminated the Claimant's FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has failed to establish that the Claimant was noncompliant with the JET Program without good cause.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant has failed to cooperate with the Department's Office of Child Support and the Family Support Unit of the Ingham County Prosecuting Attorney's office.

Accordingly, the Department's Family Independence Program (FIP) eligibility determination is **REVERSED IN PART**, and **AFFIRMED IN PART**.

The Department's termination of the Claimant's Family Independence Program (FIP) benefits for non-cooperation with child support as of December 1, 2010, is **AFFIRMED**. It is **SO ORDERED**.

It is further **ORDERED** that the Department shall:

1. Delete the negative action for noncompliance with the Jobs, Education, and Training (JET) program.
2. Make any changes/corrections in Bridges to reflect the outcome of the noncompliance.
3. If the Claimant cooperates with the Department's Office of Child Support and the Family Support Unit of the Ingham County Prosecuting Attorney's office, then provide the Claimant with assistance to overcome her issues with her a long commute so that she may attend the JET program.
4. If the Claimant cooperates with the Department's Office of Child Support and the Family Support Unit of the Ingham County Prosecuting Attorney's office, then refer the Claimant to the JET program.

/s/

Kevin

Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 30, 2011

Date Mailed: March 31, 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 60 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 receipt 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.

KS/vc

cc:

