

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201254058
Issue No: 1038
Case No: [REDACTED]
Hearing Date: June 28, 2012
County: Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: COREY A. ARENDT

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on Thursday, June 28, 2012 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

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

I find as material fact, based upon the competent, material and substantial evidence on the whole record:

1. On or around May 17, 2011, the Claimant began working at Sears.
2. As of November 23, 2011, the Claimant was participating in WF/JET.
3. [REDACTED] has a policy that forbids employees from taking adjustments on clearance items. The Claimant was aware of the policy.
4. On or around February 27, 2012, the Claimant purchased a clearance item from [REDACTED]. The Claimant later returned to [REDACTED] and returned the item. During the return, the Claimant notified the checkout cashier of the clearance item and the possibility of an adjustment. The checkout cashier (front end manager) indicated it wouldn't be a problem. The checkout cashier adjusted the item and finished the transaction.
5. On March 6, 2012, Sears loss prevention interviewed the Claimant. During the interview, the Claimant admitted to taking an adjustment on the

clearance merchandise and to knowing that the adjustment was against [REDACTED] policy.

7. On March 10, 2012, [REDACTED] terminated the Claimant from employment for taking an adjustment on a clearance item.
8. On April 10, 2012, the Claimant notified WF/JET about her termination from [REDACTED].
9. On April 23, 2012, the Department sent the Claimant a notice of noncompliance.
10. On May 8, 2012, the Claimant and the Department participated in a triage. During the triage, the parties discussed the termination from [REDACTED]. Based on the triage discussion, the Department determined the Claimant's termination from [REDACTED] was considered misconduct.
11. On May 15, 2012, the Department sent the Claimant a notice of case action. The notice indicated the Claimant's FIP benefits were being closed and sanctioned for noncompliance with the WF/JET program.
12. On May 18, 2012, the Claimant requested a hearing in protest of the May 15, 2012 notice of case action.

CONCLUSIONS OF LAW

The 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 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).

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.

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.

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.

- **Firing for misconduct or absenteeism (not for incompetence).**

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.

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.

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.

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.

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.

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.

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.

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.

In this case, the Department determined the Claimant’s termination from Sears amounted to misconduct and therefore the Claimant was found to be noncompliant with the WF/JET program.

Misconduct as identified in policy is **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.**

The Claimant was fired for allegedly violating a known [REDACTED] policy. However, I do not find the Claimant’s actions to be an intentional act that was harmful to the interest of the employer when the Claimant took the action under the supervision and with approval

from the front end manager. Furthermore, the Claimant's actions in this case do not amount to a finding of gross negligence as again the Claimant had the approval of the front end manager.

Additionally, this appears to be an isolated incident. The Claimant had not received any prior write-ups and there was no warning that a termination was imminent.

Consequently, I do not find the Claimant's actions amounted to misconduct and therefore her termination from [REDACTED] did not amount to an act of noncompliance.

DECISION AND ORDER

I find, based upon the above findings of fact and conclusions of law, decide that:

1. The Department improperly terminated the Claimant's Family Independence Program (FIP) benefits for noncompliance with WF/JET requirements.
2. The Department is ordered to initiate a redetermination of the Claimant's eligibility for FIP benefits beginning June 1, 2012 and issue retroactive benefits if otherwise qualified and eligible.

Accordingly, the Department's actions are **REVERSED**.

/s/ _____
Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 29, 2012

Date Mailed: June 29, 2012

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.

CAA/tb

cc:

