

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2008-32336
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 3, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on March 3, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and a three month sanction upon the claimant for non-compliance with work-related activities?

FINDINGS OF FACT

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

- (1) Claimant was an FIP recipient in Kent County.
- (2) Claimant attended a job interview on Friday, July 25th, 2008 and missed her JET class.

(3) On Monday, July 28th, claimant realized that her wallet had been stolen, possibly at the JET class.

(4) Claimant contacted her caseworker following the theft, who advised claimant on the steps she needed to take, as soon as possible, in order to secure her bank accounts and identification. These steps included filing a police report and replacing her driver's license and Social Security card.

(5) On 7-29-08, claimant skipped her morning JET class in order to replace her documents. Claimant still completed 6 hours worth of employment-related activities that day.

(6) On 7-30-08, claimant was put into noncompliance status for failing to attend the 7-25-08 and 7-29-08 classes, and sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for 8-14-08.

(7) On 8-14-08, the triage was held. Claimant submitted evidence that she had been at an interview on 7-25-08, as well as documentation showing that she had been at the Social Security Administration to replace her Social Security card on 7-29-08.

(8) DHS refused to grant good cause, citing that claimant had only 24 hours to report a job interview, and that she did not have to go to the Social Security Administration at that time, as well as stating that claimant did not call in to report her absences.

(9) Claimant does not own a phone.

(10) This is claimant's second incidence of noncompliance.

(11) The negative action date provided by the Department was 9-03-2008.

(12) On 9-02-2008, claimant filed a request for hearing, challenging the Department's good cause determination.

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).

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full-time must be referred to the Jobs, Education and Training (JET) Program or other employment service provider, unless 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 to find employment. PEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1. This is commonly called “non-compliance”. PEM 233A defines non-compliance as failing or refusing to, without good cause:

“...Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider...” PEM 233A pg. 1.

However, non-compliance can be overcome if the client has “good cause”. 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. PEM 233A. A claim of good cause must be verified and documented. PEM 233A states that:

“Good cause includes the following...

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....”

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

Furthermore, JET participants cannot be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. PEM 233A.

At these triage meetings, good cause is determined based on the best information available during the triage **and prior to the negative action date**. PEM 233A.

If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to JET, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. Note that good cause may still be established post-triage, if it is established prior to the negative action date. PEM 233A.

The Department has brought up two incidents to establish that the claimant was in noncompliance: claimant’s absence on 7-25-08 and claimant’s absence on 7-29-08.

Claimant testified at hearing that she missed the 7-25-08 class because she was at a job interview. The Department testified that they agreed that she was at a job interview, and that claimant did provide proof that she was at a job interview before the negative action date. However, the Department also testified that the regulations required claimant to provide proof within 24 hours of the interview in order to establish that claimant was actually at the interview, and that, had claimant called in prior to the missed date, or provided proof within 24 hours, the Department would have found good cause and not penalized claimant for the missed class.

Unfortunately for the Department, no such regulation requiring 24 hour notification exists in the PEM. While this may be a local JET class requirement, this requirement is not supported in the regulations; the regulations only require that a claimant establish good cause before the negative action date, which in this case was 9-03-08. Furthermore, that the claimant did not call is irrelevant; there is no requirement that a claimant establish good cause before a need for good cause is established.

Even so, good cause is not the correct standard under which to evaluate the missed 7-25-08 class. A job interview is an employment-related activity. The correct standard is to determine whether or not the claimant was partaking in an employment-related activity. The claimant is claiming she was participating. The Department admits that claimant was participating. Therefore, there is not an issue of noncompliance on 7-25-08 to sanction, and the Department is in error for treating it as if it was.

The issue regarding the good cause determination for the missed 7-29-08 class is more difficult, in that a determination must be made as to whether or not claimant's trip to the Social Security Administration to replace her stolen Social Security card is the type of event contemplated by the unplanned event or factor clause of PEM 233A. This Administrative Law Judge believes that in this particular situation, for this particular set of facts, the answer is yes.

Two facts lead to this conclusion. First, the claimant testified that she was told by her caseworker, and the Department did not rebut, that she needed to recover her documents and report the theft to the appropriate agencies as soon as possible. Secondly, this was not just a lost card, but an entire stolen wallet. Had the card simply been lost, the issue would resolve the other way—the claimant could go on their own time to replace it, and the undersigned would have trouble finding good cause. However, the fact that the wallet was stolen (along with all of claimant's other identification, as well as the contents of her wallet), gives a sense of urgency to

the proceedings—urgency that her caseworker felt as well. It is advisable in such situations not to delay in either the reporting of the theft, or the legwork necessary to replace the stolen contents. Failure to act promptly can result in very harmful effects which could affect claimant's ability to work. Claimant was simply acting reasonably prudent, which leads this Administrative Law Judge to believe that this particular case falls within the unplanned event or factor clause of good cause determinations.

That being said, such analysis of the unplanned event or factor clause does not need to be made. The Department testified at hearing that they felt that the claimant's trip to the Social Security Administration was worthy of a good cause determination; the only reason that the Department determined that good cause was not appropriate was because the claimant did not call beforehand.

Leaving aside the fact that the claimant does not have a phone, and that the claimant had been told by her caseworker to get her documents replaced as soon as possible, nothing in PEM 233A requires prior notification of the Department that the claimant establish good cause before a need for good cause exists. The correct test is not whether the Department was on prior notice that the claimant had good cause; the correct test is whether or not the claimant had good cause, period, and whether or not this good cause was established by the negative action date.

In the current case, the answers to both those tests are yes, by the Department's own admission. Therefore, the Department was in error when they found no good cause.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had good cause for her failure to attend the JET program during the month of July, 2008.

Accordingly, the Department's decision in the above-stated matter is, hereby,
REVERSED.

The Department is ORDERED to reschedule the claimant for all appropriate JET classes and/or meetings and remove all sanctions resulting from the missed classes in July, 2008.

/s/

Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 13, 2009

Date Mailed: March 16, 2009

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.

RJC/cv

cc:

