

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: 2009-10955

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 24, 2009

Ingham 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 February 24, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and 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 Ingham County.
- (2) On 10-27-08, claimant failed to attend a JET meeting and turn in all job logs for the previous week. Claimant also failed to complete a community service requirement, alleging problems with her parole and some depression following the death of her mother.

(3) Claimant never attended any therapy sessions scheduled by MRS with regard to the depression.

(4) On 10-28-08, DHS was notified of the missed appointments and claimant was put into triage status.

(5) On 10-29-08, a DHS-2444, Notice of Non-compliance was mailed to [REDACTED] with triage date of 11-20-08.

(6) Claimant changed addresses in mid-October, notifying DHS of the change on 10-17-08.

(7) The DHS-2444 was subsequently sent to the old, incorrect address.

(8) Claimant did not receive the notification of noncompliance and the triage date until shortly before the triage.

(9) On 11-20-08, claimant called to report the address change a second time, and to reschedule the triage, due to a conflict with a housing inspection, for which claimant had been given several dates.

(10) No rescheduled appointment was made at that time, nor was the claimant offered a phone triage.

(11) The housing inspection ended up being held on 11-21-08.

(12) Claimant's FIP case was closed on 11-25-08.

(13) On 12-10-08, claimant mailed a hearing request to DHS, which was received on 12-12-08.

(14) In the hearing request, claimant alleged that she had been unable to reach her caseworker to reschedule the hearing, her case had been closed, and that she had been told to request a hearing to get these matters looked into.

(15) A subsequent review of the case was held on 1-9-09 and 1-14-09, composed of interviews of claimant and the FIS worker involved within the case.

(16) During this review, it was determined that claimant did know about the triage as she had called to reschedule, that the housing inspection was held on 11-21-08, and that the request for a rescheduled triage had not been addressed.

(17) On 1-15-09, claimant was advised that no good cause had been found.

(18) This is claimant's first case of non-compliance.

(19) No DHS-754, First Case of Non-Compliance letter, was ever presented to claimant.

(20) Claimant is currently employed and is meeting all required work-related activities.

#### 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 Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained 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 p. 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. The penalty for noncompliance without good cause is FIP closure. However, for the first occurrence of non-compliance on the FIP case, the client can be excused, as will be noted later in this decision. 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. If a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. 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. PEM 233A.

DHS's procedures towards overcoming claimant's non-compliance were inadequate. PEM 233A requires that the triage be scheduled with the client before termination from a JET program, within the negative action period. If a claimant calls to reschedule, a phone triage should be offered on the spot, via conference call. If this is not possible, the new triage should be scheduled as quickly as possible. PEM 233A.

Claimant called to reschedule on 11-20-08. Nothing shows that a phone triage was offered at this time. Triage was never rescheduled. The claimant's case was allowed to close, all without the essential procedures outlined in PEM 233A. In fact, claimant's case was not even looked at again for almost 6 weeks, even after claimant's request for hearing was received.

Furthermore, had the phone triage been held, it would have been unlikely that claimant's FIP case would have closed. PEM 233A states that:

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is No Good Cause, within the negative action period, do the following...

2. Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.

3. Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period...

5. If the client accepts the offer to comply and agrees with the department's decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754...

9. When the client verifies compliance within the negative action period and is meeting the assigned activity that corrects the noncompliance, delete the second negative action. If the case closed in error, reinstate the case with no loss of benefits...

11. If the client does not agree with the department's decision of noncompliance without good cause, use the second check box on the DHS-754 that advises the client not to sign the form. Assist the client with filing a hearing request and advise them that if they lose the hearing, they will receive a new notice of noncompliance and a new meeting date and they have the right to agree to the activities outlined on the DHS-754 and avoid the financial penalty at that time unless another group member uses the family's first excuse before the hearing issue is settled... This policy only applies for the first case of noncompliance on or after April 1, 2007....

With a phone triage, or a new scheduled triage within the negative action period, claimant would have, or should, received a DHS-754. Given that claimant has testified that she is currently employed, the fact that the claimant requested a hearing in order to get her case looked at, and claimant's attempt to reschedule the first triage, the undersigned believes that it can be assumed that claimant would have accepted the second chance. This would have prevented claimant's case from going into case closure; it is inexplicable why these procedures were not followed for a claimant that wanted to get into compliance, nor why it took 6 weeks from the reschedule request to have claimant's case examined.

This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures, and that the claimant's case should never have closed.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was in error when they failed to offer client a phone triage, a rescheduled triage or a DHS-754 within the negative action period.

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

The Department is ORDERED to reschedule a triage for the claimant, and reopen claimant's case retroactive to 11-25-08. The Department is further ORDERED to institute any appropriate triage procedures, including the provision of a DHS-754, as is consistent with the Program Eligibility and Program Administrative Manuals for a first incident of non-compliance.


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

Date Signed: March 2, 2009

Date Mailed: March 3, 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 

cc: 