

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: 2009-11409

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 25, 2009

St. Clair 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 25, 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 St. Clair County.

(2) On 11-19-08 claimant's fiancée, [REDACTED], failed to attend a JET meeting, which brought his lost hours during the month to an unacceptable level, and was referred to triage.

(3) While [REDACTED] failed to attend the initial triage, he did contact the caseworkers and a phone triage was rescheduled and held on 12-10-08.

(4) [REDACTED] was found to have no good cause at this phone triage.

(5) [REDACTED] and the claimant agreed with the good cause determination and agreed to a DHS-754, First Noncompliance Letter, which allowed claimant to keep her benefits intact, as long as [REDACTED] got into compliance with JET requirements. The DHS-754 was marked "clt agreed by phone", per procedures in PEM 233A.

(6) The DHS-754 stated that the client agreed they were noncompliant and would get into compliance to avoid losing their FIP benefit.

(7) The DHS-754 also stated that the client would have to "verify you did these activities by 12/22 or 12/29 or the penalty will start".

(8) The activity in question was a JET class, with a start date of "12/22 or 12/29 as soon as scheduled by Work First".

(9) On 12-22-08, [REDACTED] reported to the JET class.

(10) [REDACTED] testified that he asked the JET instructor at that time if he could miss some days during the next week for a family trip.

(11) [REDACTED] testified that the instructor told him that it would be better if he started instead with the 12-29-08 class, and told him to go home to tell his caseworker that he would be starting then.

(12) [REDACTED] called his caseworker immediately, but was unable to get in touch with her until an unspecified time later in the day.

(13) Claimant's caseworker told [REDACTED] that he would not be allowed to miss class and to report back to JET immediately.

(14) [REDACTED] returned to JET that day, but was told that it was too late to reenter the class.

(15) [REDACTED] returned to JET on 12-23-08. A case manager wrote in his notes for that day that [REDACTED] had told the case manager that he had spoken with his DHS caseworker, who had prohibited the missed class time, and that his caseworker had told [REDACTED] to return to the class. The case manager explained that the class was already closed, and by leaving the class on 12-22-08, [REDACTED] did not actually start the program, and thus could not be allowed to return to the class.

(16) This was labeled as a "no show", and claimant was given a three months sanction for noncompliance, in accordance with the DHS-754 agreement, with a negative action date of 1-06-09.

(17) On 1-12-09, claimant filed a request for hearing, stating that he had relied on the JET instructor who had sent him home on 12-22-08, and had attempted in good faith to stay in compliance.

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 pg. 1.

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:

PEM 233A states, in relevant part, 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...”

An examination of claimant’s DHS-754 is highly enlightening as to the proper disposition of this case. Department Exhibit 5, the DHS-754 states that claimant had until “12/22 or 12/29” to complete the activities. The start date for the JET program classes was listed as “12/22 or 12/29 as soon as scheduled by Work First”. The Department testified at hearing that the alternate dates were placed there because they were unaware of what date JET would schedule [REDACTED] classes.

The second chance procedures indicate that the claimant must get into compliance “by the due date on the DHS-754 and within the negative action period”. The negative action period in this case was 1-06-08.

While [REDACTED] was originally scheduled for the 12-22-08 date, [REDACTED] testified at the hearing that he was advised by his JET instructor to leave the class and start on 12-29-08 instead and to call his case worker to advise her of JET’s accommodation. Claimant’s Exhibit 1 is a phone record of the calls [REDACTED] made that day, and they bear out his story: [REDACTED]

called the St. Clair County DHS four times that day starting at 8:49am, which would be shortly after his JET class started. Furthermore, Department Exhibits 2 and 6 also contain records of [REDACTED] calling and speaking with his caseworker to advise her of the situation.

Given that the DHS-754 had left the discretion as to the JET class schedule up to the JET program itself; and given that JET had agreed to accommodate [REDACTED] when asked, to the point of sending him home; and given that the negative action date in this case was 1-06-09 and that claimant had until this date to demonstrate compliance; and given that DHS had agreed in the DHS-754 that the class in question could be scheduled on either the 12-22-08 or 12-29-08; the undersigned believes that [REDACTED] was in compliance with the DHS-754. The class in question could have been scheduled for either date, according to DHS. That [REDACTED] attended one, asked for an accommodation, was granted the accommodation, and was rescheduled within the negative action period as per PEM 233A is not indicative of noncompliance. It is rather, following the second chance procedure, and the agreement he signed, to the letter.

Furthermore, PEM 233A specifically states that non-compliance means a “failing or refusing” to engage in work-related activities. It is not clear in the present case that [REDACTED] failed or refused to comply. [REDACTED] showed up to class on 12-22-08. He did not fail to attend; he only left when he was told to by a JET instructor. Furthermore, when his caseworker told him he had to attend, he did not refuse; he went back the next day and tried to attend the classes as he had been told to do, only to be told by the JET case manager that he would not be allowed to continue. Once [REDACTED] had been told by his caseworker that he had to attend the JET session beginning on 12-22-08, and to return to JET on 12-23-08, he attempted to return to JET, only to be told that he would not be allowed to return. This demonstrates good faith on the part of [REDACTED].

Additionally, [REDACTED] indicated, both to the JET worker, and his DHS caseworker, an absolute willingness to go to the 12-29-08 class at the time of the incident and testified at hearing that he would have canceled the trip if it turned out that he would be unable to miss his classes. This further demonstrates good faith on the part of [REDACTED] and is further proof that he was attempting to abide by the conditions of the DHS-754.

Thus, for the reasons stated above, this Administrative Law Judge finds that the claimant did not fail to comply with the requirements as laid out in the DHS-754, and the negative action and sanction imposed by the Department was in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was in compliance with the conditions set forth in the DHS-754.

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

The Department is ORDERED to reopen claimant's case retroactive to 1-06-09. The Department is further ORDERED to reschedule the claimant for any JET classes as are needed for the claimant to get into compliance with the conditions of the FIP program as set forth within the Program Eligibility and Program Administrative Manuals.

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

Date Signed: March 12, 2009

Date Mailed: March 13, 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:

