

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: 2009-12655
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 23, 2009
Calhoun 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 April 23, 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 [REDACTED], and a JET participant.
- (2) On 8-14-08, claimant was terminated by the JET program for a failure to meet the required number of hours with her job search.

(3) On 9-12-08, claimant was mailed a DHS-2444, Notice of Noncompliance, which scheduled a triage appointment for 9-19-08 and a negative action date of 9-22-08.

(4) On 9-19-08, the triage was held. Claimant did not attend.

(5) On 9-24-08, claimant called to report that she was in [REDACTED] a domestic violence shelter, and had never received notice of the triage.

(6) After consultation, it was decided to delete the negative action and reschedule the triage.

(7) On 10-30-08, a new DHS-2444 was mailed to the claimant and a triage was scheduled for 11-6-08.

(8) On 11-6-08, a new triage was held. Claimant attended.

(9) Claimant stated that her reason for good cause was child care issues and the fact that she thought her student status covered her JET obligations.

(10) The Department did not enquire into the domestic violence situation, nor explain to claimant that domestic violence could be a reason for good cause.

(11) Claimant's domestic violence issues, and the reason for entering the shelter, were concurrent with the time of noncompliance.

(12) On 11-20-08, DHS determined that good cause did not exist because JET case notes did not back up claimant's student status, and because claimant's child care issues did not meet the regulation's definition of good cause.

(13) No mention was made into claimant's domestic violence situation.

(14) On 11-26-08, claimant filed for hearing, alleging that the Department did not let her fully present her case during the triage.

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....

An unplanned event or factor includes, but is not limited to, domestic violence or homelessness.

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. PEM 233A.

The undersigned agrees that the reasons claimant gave during the triage, which included child care and her student status, were insufficient to find good cause. Child care can only be used for a finding of good cause if child care is normally unavailable in the claimant’s area or has not been offered. PEM 233A. This is not the case in the current situation. Furthermore, with regards to claimant’s status as a student, claimant testified that she was not currently enrolled as a student at the time; therefore, she could not be meeting her job requirements.

However, reasons for good cause cannot be, and should not be, limited to factors presented by the claimant. PEM 233A states that good cause must be established by the best information already on file by the Department; it is the undersigned’s opinion that this

information included the allegations of domestic violence, and this information was never considered.

While it is true that the claimant never specifically mentioned domestic violence as a reason for good cause, the Administrative Law Judge believes that claimants in domestic violence situations must be afforded more sensitivity to their specific situation than may be typically required. A domestic violence survivor may be reluctant to speak about the situation; studies show that a survivor may even blame themselves for the situation. These factors may lead to a claimant never presenting or talking about domestic violence as a reason for good cause, even though domestic violence may have been the factor that interfered with claimant's work related activities in the first place. Therefore, when the Department is aware that there has been domestic violence in a situation with a claimant, and there is a reasonable chance that this domestic violence was a factor that may have lead to good cause, the Department should take the initiative to investigate the situation to see whether or not good cause was warranted because of this factor, taking special care with regard to the mental status of the claimant.

In the current case, the Department knew that claimant had never received her first notice of noncompliance, sent out in early September, because she was in a domestic violence shelter. This fact should have put the Department on notice that there may have been a situation in play that could lead to claimant's good cause. However, when the triage came around, the Department never inquired or otherwise followed up on this fact.

Upon questioning, claimant testified that the domestic violence was ongoing during the time of noncompliance, and it was this domestic violence that led to her eventually seeking shelter during the beginning of September. The undersigned has no reason to doubt this testimony, and the Department offered no rebuttal. Claimant testified that this violence, as well

as some housing issues and attempts to get care for her children left her unable to maintain compliance with the JET program. Again, the undersigned has no reason to doubt this testimony.

The Administrative Law Judge believes that this type of situation was one of those contemplated by PEM 233A. While it is true that the claimant did not specifically raise it at the triage, it is also true that the Department is required to use all information it has on hand in order to make a good cause determination, and therefore, should have followed up on the domestic violence angle. That it did not led to an erroneous good cause determination.

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 August, 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 and negative actions resulting from the issue at hand.

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

Date Signed: May 4, 2009

Date Mailed: May 5, 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:

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