

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: 2009-14532
Issue No: 1038; 3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 26, 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 March 26, 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 and FAP recipient in Ingham County.
- (2) On 10-13-08, claimant and claimant's husband were referred to the Work First Program, and were told to attend an orientation on 10-27-08.

(3) On 11-3-08, DHS was notified that neither claimant nor her husband showed up for the orientation program.

(4) On 11-6-08, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage on 11-13-08.

(5) Claimant and her husband did not attend the triage; however, sometime after the triage, claimant did make contact with her case worker and was allowed to explain her side.

(6) Claimant alleged to her caseworker that she had not received her mail with regard to the Work First orientation notice until after the date of the orientation.

(7) Claimant's caseworker considered this allegation, but ultimately made a determination of no good cause on 11-26-08.

(8) Claimant and claimant's husband had a single incident of noncompliance in July of 2008; this resulted in a negative action against them both, and thus counted as two separate penalties, making this penalty their third penalty, and therefore eligible for all sanctions appropriate for a third penalty.

(9) A negative action was entered on 11-18-08, which resulted in a cessation of claimant's FIP allocation for one year, and a reduction of her FAP budget.

(10) On 1-22-09, claimant requested a hearing regarding the above stated matter.

(11) At the hearing, the Department stipulated that claimant's husband was actually in compliance with work-related activities, and dismissed his incident of noncompliance.

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 Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. 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, noncompliance 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. The penalty for noncompliance without good cause is FIP closure. However, for the first occurrence of noncompliance, on the FIP case, the client can be excused, with certain conditions; however, in the current case, claimant and her husband received two penalties stemming from the same incident in July of 2008, and were never eligible for the second chance procedures. PEM 233A.

JET participants can not be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. 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.

Claimant contends that good cause was established because she did not receive her mail until after the date of the JET appointment; the Department contends that no mail was ever returned by the mail system, and therefore, no finding of good cause could be made.

Claimant is correct in her contention that had she not received her mail, a finding of good cause would be warranted. The correct test for good cause is whether the claimant would have cooperated with the Department’s reasonable expectations, but for claimant’s unique problems, be they from health, transportation, or unforeseen circumstances. In the current case, the claimant not receiving her mail would certainly qualify as an unforeseen circumstance, and had she been willing to comply (except for not receiving a notification), a finding of good cause would be directed.

Unfortunately, it is a basic tenant of law that a mail recipient who wishes to allege that they did not receive a critical piece of mail has the burden of proof in providing of evidence of its failed delivery. A proper mailing and addressing of a letter creates a presumption that the letter was received; the presumption can only be rebutted if the claimant provides the evidence to the contrary. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

This is applicable to the claimant's situation. There is no allegation that claimant did not receive the letter in question; in fact, claimant admits to receiving it, even though the letter arrived late. Thus, we can assume that the letter was mailed and addressed correctly. Thus, the claimant must provide evidence that this letter arrived late; however, the claimant has no evidence that it did. Claimant states that she threw out the original envelope, and has no evidence to offer to prove her contention.

Therefore, regardless of claimant's credibility, the undersigned must reluctantly conclude that the claimant has not met her burden of proof, and without this burden of proof, any request for a verdict of good cause must fail.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not have good cause for her failure to participate in work-related activities.

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

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

Date Signed: March 31, 2009

Date Mailed: April 1, 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:

