

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: 2009-14595

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 7, 2009

Wayne 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 7, 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 Wayne County.
- (2) Claimant was referred to JET for an appointment on 12-22-08.

(3) Claimant never received a notification of this appointment, and therefore, did not attend.

(4) On 1-13-09, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage date of 1-23-09 at 9:30 a.m.

(5) Claimant attended the triage, and explained that that she did not receive notification of the appointment.

(6) Claimant was told that her excuse was not acceptable, but that she would be put back into JET on a “10 day compliance test”, and was told to sign a form to reenter the class.

(7) The “10 day compliance test” turned out to be the DHS-754 process, and the form claimant signed to reenter the class was the DHS-754, in which claimant acknowledged that she had no good cause.

(8) Claimant was then rescheduled for JET classes for 1-26-09.

(9) Claimant was told that she must attend all JET classes during the “10 day compliance test”, and that if the claimant missed one class, for any reason at all, regardless of the circumstances, claimant would be terminated from the program and her cash grant would be cancelled.

(10) Claimant attended JET on 1-26-09, but on 1-30-09, claimant’s son got into an altercation at school during the morning, and claimant was called to deal with the situation.

(11) Claimant was unable to arrive at JET on time, and was deemed noncompliant.

(12) Claimant was subsequently sanctioned for noncompliance with work related activities, and terminated from the JET program, with a sanction applied to her FIP grant.

(13) On 2-13-09, claimant requested a hearing alleging that she had never received her initial JET appointment letter, and was therefore in compliance with 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).

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. Clients who have not been granted a deferral 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 noncompliance 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, 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. 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. Good cause may be verified by information already on file with DHS or MWA. 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. For the first occurrence of noncompliance without good cause, the client can be excused. PEM 233A states, in 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...

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 regard to the claimant's initial incident of noncompliance, the undersigned is having difficulty determining whether the claimant was ever noncompliant to begin with.

The Department testified that it notified the claimant regarding the 12-22-08 JET appointment by giving the claimant her appointment notice personally at a meeting between claimant and her caseworker on 12-09-08. The Department further testified that this notice was handed to the claimant; it was not mailed.

While it is uncontested that claimant did not attend the 12-22-08 JET meeting, claimant alleges that such a meeting between herself and her caseworker never occurred, and claimant subsequently never received the notification regarding the appointment.

In order to determine the respective credibility of each party, the Administrative Law Judge requested a copy of the Department sign-in logs for 12-9-08, the day of the alleged meeting. The Department testified that they were unable to secure the logs on that day, and requested an extension in order to secure them. These logs would be critical in determining the truth of the matter; if the logs showed that the claimant had been at DHS at the time requested, it would belie her claim that the Department never gave her a notice to attend JET. Therefore, the

Administrative Law Judge granted the extension, to give the Department the time it needed to secure the logs.

Unfortunately, the Department never returned the logs as requested by the fact-finder. In a short letter to the Administrative Law Judge, the Department claimed that it was unable to locate all the logs in question for that particular day, and the logs that were found did not have claimant's name upon it. The Administrative Law Judge is under the belief that these logs are used for record keeping purposes in logging all those who visit the Department of Human Services Branch office; the claimant was adamant that she would not appear on these logs.

As the Department was unable to produce the logs, which are a normal business record, the undersigned must therefore take their absence in a light most beneficial to the claimant.

Therefore, the Administrative Law Judge concludes that the claimant's testimony that she did not go to DHS on the day in question was credible and no such meeting between claimant and caseworker ever took place. Furthermore, the undersigned thus holds that the claimant did not receive notification of the JET meeting as the Department contends, and was therefore compliant with work related activities. The Department's correct course of action at the triage would have been to reschedule the claimant at that time for JET, as the claimant was never in noncompliance to begin with.

The Department may contend that the claimant was given a chance to object to the good cause determination when she was given a DHS-754, but did not object, and thus must agree with the good cause determination and the allegation that she was not in compliance with the regulations. The undersigned must respectfully disagree.

The initial good cause determination was faulty; it did not contemplate that the claimant was never in noncompliance, and furthermore, the claimant was told that whether or not she

received the appointment letter was irrelevant. Therefore, it follows that the Department erred in issuing a DHS-754 in the first place, and should have simply reassigned claimant to JET.

Furthermore, even if the issuance wasn't in error, claimant testified, and the Department did not rebut (even when asked), that she was not told that she could request a hearing as to the good cause determination. Claimant was told flatly that if she wanted to keep her benefits she would have to sign the DHS-754 for a "10 day compliance test". The DHS-754 process is not a compliance test or an exam; it is a second chance that a claimant who wishes to get into compliance can take. There are no set time limits; the Department can only set reasonable conditions to get into compliance. If the claimant is subsequently noncompliant, normal good cause excuses are still valid, contrary to the Department's statements to the claimant that could not miss a day for any reason at all.

Additionally, there are real penalties to taking the DHS-754 process, which the Department did not explain to the claimant: when claimant signed it, she still was receiving a penalty on her case, and she was tacitly admitting that she agreed with the good cause determination. A claimant does not have to take the DHS-754 process to keep her benefits; she has an absolute right to first contest the determination before the Administrative Law Court, before accepting the process. Should the claimant lose her case, she can still take the second chance. The Department was in error when it told her that she had to sign.

If the Department had simply given the form and told claimant to look it over and sign if she agreed, this Administrative Law Judge would have little to say in the matter. However, when claimant was told that her benefits depended upon her signing the form, claimant was effectively denied a hearing into the good cause and noncompliance matter. However, this issue is of little

difference; as stated above, a DHS-754 should have never been issued, and whether or not claimant signed the form knowingly is only of academic interest.

With regard to the claimant's second absence from JET on 1-30-09 (which triggered the sanction and hearing request), given that the claimant's first penalty was in error, the undersigned believes that this particular round of classes would count as claimant's rescheduled appointment. Claimant admits that she did not attend, but claims to have good cause. However, the Department is required to hold a triage and make a good cause determination in this matter before the undersigned has jurisdiction to decide whether the claimant's allegations of good cause are appropriate. The Department should therefore schedule a second triage, if such an absence would normally be deemed noncompliant, unexcused, or in excess of the normal absences allowed by the JET program, and allow the claimant a chance to submit proof of her good cause before making a determination. Should the claimant be aggrieved by this determination, she can file a hearing request into the matter.

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 JET program during the month of December, 2008, as she was never notified of any appointment.

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

The Department is ORDERED to remove all negative actions pending against the claimant in the current matter, and restore claimant's FIP benefits retroactive to the date of case closure. A triage may be scheduled with regard to the missed JET class of 1-30-09, if the

Department determines that such an absence would normally be deemed noncompliant, unexcused or was in excess of the normal allowed absences from the JET program .

/s/

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

Date Signed: April 30, 2009

Date Mailed: April 30, 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:

