

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: 2009-15441

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 2009

Genesee 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 16, 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 Genesee County.
- (2) On 2-4-09, claimant was sent a DHS-2444, Notice of Non-Compliance, which indicated that she had been noncompliant in the JET program.
- (3) This notice scheduled a triage for 2-9-09.

(4) Claimant, according to the notice, failed to participate in work-related activities; according to the MIS case notes, the closure was because claimant “did not engage/correspond with [REDACTED]. No file on participant”.

(5) Claimant did not attend triage, allegedly because triage notice was sent to the wrong address.

(6) Claimant’s FIP case was closed in a response to claimant’s missed triage appointment.

(7) Claimant’s DHS-71, Good Cause Determination, read that claimant “did not show for her Triage appointment scheduled today.”

(8) On 2-18-09, claimant filed a hearing request to protest the closure; even though this was before the negative action date, good cause was not considered.

(9) Claimant’s hearing request alleged that she had never been noncompliant; that she had been working 40 hours a week for the past 6 months and did not understand how she was noncompliant.

(10) Claimant’s work records indicate that claimant has been working 40 hours a week for the past 6 months.

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, 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. 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.

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. **Good cause must be considered, even if the client does not attend.** 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 record, it is important to note that the Department erred when it did not make an actual good cause determination in claimant’s case; PEM 233A requires that, regardless of whether or not a claimant shows up for triage, a good cause determination must be made beyond “claimant did not show up for the triage”. Furthermore, when claimant contacted the Department on 2-18-09, before the negative action period had run, the Department should have heard her allegations of good cause and then made an actual good cause determination.

This point is merely academic however, and ignores the larger issue: **claimant was never in noncompliance.** At the hearing, claimant’s supervisor testified on behalf of claimant, and claimant submitted work records and logs which clearly showed that claimant had been employed during the time in question. Furthermore, these records were being faxed into JET, as shown by the attached fax verification sheets. It is unclear why this case went as far as it did; claimant was clearly not noncompliant, and was working as contemplated by the policies, and furthermore was faxing in all verifications. The only possible explanation lies in the MIS case

notes, Department Exhibit 3, which states that there was no file on the claimant. By all appearances, claimant was a victim of mislaid paperwork. However, the Department's filing problems should never be the problem of a claimant, and the Department should be advised to examine a case more closely for actual noncompliance before placing sanctions upon an innocent client.

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 it declared claimant in noncompliance with work-related activities.

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

The Department is ORDERED to reinstate claimant's FIP grant retroactive to the negative action date.

/s/

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

Date Signed: April 29, 2009

Date Mailed: April 29, 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:

