

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: 2009-15470

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 2, 2009

Lenawee 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 2, 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 Lenawee County.
- (2) Claimant and claimant's husband were participants in the JET program.
- (3) On 1-26-09, JET notified claimant's caseworker that both claimant and claimant's husband had been noncompliant with JET program attendance.

(4) On 1-28-09, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage meeting for 2-4-09.

(5) On 1-29-09, claimant called her doctor to get verification regarding her husband's illness; claimant's doctor advised them that they would fax the information to DHS.

(6) On 2-1-09, claimant spoke with her caseworker and explained that her husband had been sick for the past month and claimant had been providing in-home care.

(7) Claimant's caseworker requested documentation regarding claimant's medical condition, and sent out a DHS-3503, Verification Checklist, requesting medical verification of the illness.

(8) On 2-2-09, claimant called caseworker and advised him that she and her husband would be unable to make the triage appointment on 2-4-09.

(9) Claimant's caseworker subsequently held a telephone triage on the spot, in accordance with PEM 233A.

(10) Claimant's caseworker advised that good cause would be determined if medical records were submitted by 2-9-09.

(11) DHS never received medical documentation, and claimant's case was closed on 2-10-09.

(12) While claimant has never had an incident of noncompliance before, claimant is ineligible for the DHS-754 second chance procedure because both claimant and claimant's husband are each being considered for a separate incident of noncompliance, even though this stems from the same incident.

(13) On 2-17-09, claimant requested a hearing, alleging that their FIP case had been closed in violation of Department procedures.

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, 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. PEM 233A states that:

Good cause includes the following...

Illness or Injury

The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client....

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. 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.

The current case provides an interesting scenario in that the Department is not arguing that claimant and her husband did not have good cause; based on Claimant's Exhibit 1, the medical evidence of record indicates that claimant's husband's doctor did forbid claimant from working, due to a serious heart condition. The overarching question, however, is whether or not the Department was aware of this fact at the time good cause was determined. The question we must always ponder is not simply whether the Department's action was incorrect, but rather, whether the Department acted correctly given the knowledge that it had in its possession at the time it made its decision.

It is undisputed that the while the Department was on notice that the claimant was sick, it correctly required verification of claimant's husband's ailments. For that reason it requested verifications, both orally and through a DHS-3503 form. However, Claimant's Exhibit 1, which is comprised of medical records, does indicate that the doctor had been notified of the need to fax medical documentation to the Department, and provides some indication that they did so.

However, claimant's caseworker testified that he never received these documents, and made his decision based on this fact. The undersigned finds his testimony credible, and believes that claimant's caseworker specifically never received the documents; however, the undersigned also finds credible claimant's testimony that the documents were faxed in, and has provided documentary proof that they were. Claimant's caseworker may have never received the documentation—but this does not mean that the Department never received them. Given claimant's documentary evidence, the Department has the burden of proof to show that claimant never submitted them, and it has failed to meet this burden of proof. It is not unheard of for an agency as large as the Department of Human Services to misplace such records, and this Administrative Law Judge will not hold against a claimant such misplacement.

The Department testified at hearing that such records would have been enough to grant good cause; therefore, the undersigned finds that claimant's husband had good cause for his noncompliance, and should not be sanctioned.

Unfortunately, there are two issues of noncompliance that must be discussed—claimant's noncompliance is also at issue.

Claimant testified at hearing that she was noncompliant because she needed to stay home to take care of her husband's medical issues. If verified, such a claim would be enough to grant good cause. Unfortunately, nowhere in the submitted medical records is this claim verified. Such verification may exist, and given the seriousness of claimant's husband's illness, the undersigned

is sympathetic to the claimant's argument. However, our test must only consider whether the Department's actions were correct given the information they knew, or should have known, at the time they took the action.

Even considering that the Department should have had the medical records providing verification for her husband's illness, these medical records do not contain verification requiring the claimant to take care of her husband—they only state that claimant's husband was unable to work, not that he required round the clock care. Thus, the undersigned is unable to find good cause for the claimant herself.

This does not mean that a sanction is appropriate for claimant's case. Given that her husband did have good cause, claimant's case is only facing one sanction. Claimants who are facing their first issue of noncompliance are eligible for the DHS-754 second chance procedures.

PEM 233A states 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..."

As this is claimant's first case of noncompliance, claimant should be eligible for the above procedure, and the Department must offer it to her.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant's husband had good cause for his failure to attend the JET program during the month of January, 2009. The Department was correct when it denied good cause for the claimant.

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

The Department is ORDERED to offer the claimant a DHS-754, First Noncompliance Letter, in order to allow the claimant a chance to escape sanction.

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

Date Signed: April 9, 2009

Date Mailed: April 9, 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:

