

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: 2009-15862

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 24, 2009

Iosco 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 June 24, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for noncompliance 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 Iosco County.
- (2) On 12-15-08, DHS received notice that claimant's daughter had returned to claimant's home.

- (3) Claimant's daughter is a mandatory FIP member.
- (4) DHS sent a verification form to the daughter's high school to verify that the daughter was a full time student.
- (5) This form was returned on 12-18-08, and verified that the daughter was an attendee.
- (6) On 1-14-09, the school resent the verification and stated that the daughter was not actually attending the school and had only showed up a few times before dropping out.
- (7) Claimant's daughter was sent a DHS-4785, JET Appointment Notice, scheduling her for JET orientation.
- (8) Claimant's daughter did not attend the orientation, scheduled for 1-20-09.
- (9) On 1-23-2009, claimant was sent a DHS-2444, Notice of Non-Compliance, which indicated that she had been noncompliant in the JET program, scheduling a triage for 1-30-09. The final date to prove good cause on this form was listed as 2-4-09.
- (10) Claimant did not attend the triage, but contacted the Department on 2-2-09 to discuss the issue.
- (11) Claimant did not provide any further evidence of good cause.
- (12) On 2-4-09, claimant's FIP was sanctioned and closed.
- (13) No DHS-71, Good Cause Determination was completed.
- (14) This is claimant's first incident of noncompliance.
- (15) No DHS-754, First Noncompliance Letter, was presented to the claimant.
- (16) Claimant's daughter enrolled in a high school on 2-17-09.
- (17) On 3-6-09, claimant filed a request for hearing.

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 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 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 noncompliance 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.

DHS’s procedures towards overcoming claimant’s alleged noncompliance were inadequate. PEM 233A requires the Department to make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. The Department did not produce a DHS-71, Good Cause Determination. No DHS-71 was included in the Department’s Exhibits. PEM 233A requires that a DHS-71 be completed. The Department has not proven that this form was completed. Therefore, the undersigned must conclude that no good cause determination was ever made. This is plain error.

Furthermore, if good cause is not granted, PEM 233A requires that claimant be offered a DHS-754, First Noncompliance Letter, to offer a claimant a chance to get back into compliance without sanction. While a penalty is still applied, a DHS-754 allows a claimant to agree to get back into compliance without the sanction part of the penalty. No DHS-754 was offered. The Department has not presented any evidence that this was not claimant's first penalty. A DHS-754 must be offered for the first incident of noncompliance. While the Department does not have to present a DHS-754 if the claimant does not show up for triage, the claimant did contact the Department prior to the negative action date to discuss the case. PEM 233A states that if the claimant contacts the Department to reschedule, the Department must conduct or offer a phone triage on the spot.

The claimant contacted the Department prior the negative action date; the Department subsequently proceeded to discuss the case with the claimant, and invited claimant to submit evidence of good cause. The procedure the Department followed is identical to that of providing a phone triage in the event of a reschedule request; therefore the undersigned holds that this discussion counted as the triage. Thus, the Department was required to offer a DHS-754 to the claimant at this time. The Department did not do this. This is also plain error.

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 they failed to make a good cause determination and provide claimant with a DHS-754.

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

The Department is ORDERED to remove all sanctions against the claimant, and restore benefits retroactive to the date of negative action. The Department is further ORDERED to

reschedule the triage and make a good cause determination, per the regulations in PEM 233A.

Should the Department feel that a finding of good cause is not warranted, the Department is further ordered to provide the claimant with a DHS-754. Should the claimant refuse the offer of a DHS-754, and disagree with the good cause determination, the claimant can re-file for a hearing on the actual issue of good cause.

/s/

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

Date Signed: July 22, 2009

Date Mailed: July 22, 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:

