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: 2009-16619
Issue No: 1038
Case No: [redacted]
Load No:
Hearing Date:
April 22, 2009
Bay 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 22, 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 Bay County.

(2) Claimant's boyfriend, [redacted] was an active FIP recipient on claimant's case; as the current matter revolves entirely around the actions of [redacted], he shall henceforth be referred to as the claimant.

(3) In December, claimant alleged that he was unable to participate with JET, due to mental disability.

(4) Claimant was given a DHS-49D, Psychiatric/Psychological Examination Report, to have completed by his doctor for verification of a disability before being evaluated for a deferment; claimant returned the form on 12-11-08.

(5) The DHS-49D noted that claimant continued to suffer from "severe social anxiety" from social anxiety disorder and bipolar disorder type II (DSM IV 296.89 and 300.23).

(6) The DHS-49D also rated claimant with a current GAF score of 52, with the highest score during the past year being a 50.

(7) Furthermore, the DHS-49D noted that claimant was currently able to work in his current job in janitorial services, but did not specifically write limitations beyond the diagnoses of social anxiety disorder and bipolar disorder Type II.

(8) Based on the statement regarding claimant's work ability, claimant was not referred to MRT for a deferral evaluation, but was instead scheduled for the full JET class.

(9) Claimant was scheduled to attend JET on 12-22-08 or 12-29-08.

(10) Claimant started attending JET the week of 12-29-08, and was credited with 18 hours of class participation for that week.

(11) On 1-5-09, claimant's girlfriend contacted JET to report that claimant would not be returning to JET because of his anxiety issues.

(12) On 1-5-09, claimant's girlfriend contacted DHS to alert them that claimant would not be returning to JET and that they would submit papers from their doctor as soon as possible verifying claimant's excuse.

(13) Claimant was unable to provide the documentation right away, and claimant was sent a DHS-2444, Notice of Noncompliance on 1-29-09, which scheduled a triage for 1-27-09.

(14) Claimant and girlfriend attended the triage on 1-27-09. It was noted at the triage that claimant did not speak or maintain eye contact during the triage, and claimant's girlfriend spoke on his behalf.

(15) Claimant did not submit medical documentation at the triage, though he had contacted his doctor with regard to getting it into to DHS; claimant was informed that he had until the negative action date, 2-3-09, to submit medical documentation.

(16) On 1-30-09, [redacted] faxed medical documentation to DHS that stated that, among other things, claimant was extremely anxious and unable to tolerate being around other people, sensitive to commotions and is "currently unable to function in the Work First program. I would anticipate that he will need to be off for a three month period".

(17) Because the letter used the word "currently", DHS determined that the claimant did not have good cause for noncompliance with the JET program, as claimant's noncompliance happened a few weeks before.

(18) Claimant was sanctioned for noncompliance.

(19) This was claimant's third incident of noncompliance.

(20) On 3-11-09, claimant filed 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).

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 "noncompliance". 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. 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. This was claimant's

third incident of noncompliance, and was thus ineligible for second chance procedures. PEM 233A.

Furthermore, 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. 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.

Much of the Department's contention over good cause in this case comes down to [redacted] use of the word "currently" when he wrote his letter detailing the claimant's condition. In fact, the Department admits that if the claimant were to request a deferral or good cause now, the Department would have to grant it. However, because the doctor used the word "currently" when he described the claimant's medical condition, the Department argued that it could not legally grant good cause. Furthermore, it argued, the word "currently" could only be used to describe the immediate present; even if the claimant's noncompliance was only the day before, without a sentence that specifically excused each and every particular time period that a claimant missed, the Department could not grant good cause.

The undersigned believes that this stance is a misreading of both the intent and the plain language of PEM 233A, and additionally, ignores the great weight of the evidence on record, in order to finesse a finding of no good cause.

When claimant submitted a DHS-49D from [redacted] on 12-11-08, it was noted that claimant had a GAF of 52 (which is considered borderline for disability purposes), as well as severe social anxiety disorder. It did note that claimant was able to work, and specifically listed his job in janitorial service; however, what is more important for what [redacted] did not say: specifically, that claimant was able to participate in Work First.

When evaluating disability, it is important to realize that simply because a claimant can work at a single type of job, the claimant is not cleared for working at all types of jobs, or even in every type of situation. [redacted] explicitly approved work in the janitorial field, which is a job that can typically be worked in many situations with little social interaction and minimal contact with the public; in short, a job that claimant could work with his documented disability. More importantly, claimant was only working this job for a very limited amount of hours, which he testified was all he could handle with his disability.

Unsurprisingly, with claimant's medical history, when he attended a JET orientation class, claimant's social anxiety manifested and claimant found himself unable to attend further when forced to interact with the number of people who attend a typical JET orientation. Instead of sending claimant to Michigan Rehabilitative Services to evaluate claimant's limitations in regard to his obviously severe, medically documented situation, the Department sent claimant to a mainline JET class, not apparently making the connection that sending somebody with social anxiety on the scale of the claimant's to a social situation would be most unwise. The Department seized upon [redacted] comment that claimant was able to work in his janitorial field and extrapolated that to mean that claimant could work all jobs and participate in all situations, ignoring common sense.

This is not to say that claimant is legally disabled with regard to work-related activities; that is a completely separate evaluation from a good cause determination, and will not be made

here. Disability evaluation, at its most basic level, requires an evaluation of whether claimant could hold any job, given his set of limitations. Our good evaluation must only evaluate whether claimant's illness could have reasonably interfered with the work related activities at issue—not whether the claimant could have worked at any job. A claimant who has good cause need not necessarily be fully disabled. However, the documentation from [redacted] did put the Department on notice that claimant would have hurdles to overcome, despite the testimony that the Department believed that claimant was fully able to work with no limitations.

When claimant predictably dropped out of class due to social anxiety problems, he was told by the Department to get medical verification of his illness. This arrived on 1-30-09 and is documented as Department Exhibit 5, dated 1-29-09 which states:

> …is under my psychiatric care for Bipolar Disorder Type II with associated severe social anxiety, impaired social skills and depression. He is currently extremely anxious and unable to tolerate being around other people. He is also sensitive to loud sounds or commotion. He has started treatment here including psychotropic medications and individual psychotherapy.
>
> I feel he is currently unable to function in the Work First program. I would anticipate that he will need to be off for a three month period. If he can return sooner I will recommend it.

Department's quibble is with the word "currently"; they contend that because the letter did not specifically list the specific dates claimant's condition was aggravated, claimant could not be granted good cause. This is false.

A claimant may have the flu on a date they are scheduled to attend JET, and be unable to schedule an appointment to see a doctor until the next day; when the claimant does see the doctor, the doctor will prudently write: "patient has the flu and is currently unable to work". The Department contends that such a letter would be insufficient for verification purposes unless the letter specifically ruled out the day before. However, most doctors will only testify to that which they currently observe in the patient, as any prudent person in the scientific fields will do, and

therefore, no claimant would ever be able to prove that they were sick at the exact time of a missed JET assignment—they could ever only prove that they were sick at the exact time they went in to see the doctor. Therefore, when a doctor writes the word “currently”, we cannot take the word as a strict measure of time and use it only to evaluate a claimant’s condition at that exact moment. We must instead inject a bit of common sense.

The regulations do not require a claimant to provide exact dates; PEM 233A only states that a claimant must provide verification for an illness that could reasonably hinder claimant’s compliance with work related activities. Requiring a claimant to provide medically documented exact dates in every circumstance would hold claimant to an impossibly high threshold not required by a plain reading of the regulations. The exact test we should use can be stated thusly: did the claimant provide verification of an illness that could reasonably be expected to interfere with work related activities during the time of the noncompliance?

This is where common sense comes into play. In the previous hypothetical regarding the flu, common sense indicates that flu symptoms do not develop spontaneously in a doctor’s office at the exact moment of an examination. Instead, we expect symptoms to build gradually several days before hand, with some of those days potentially marked by symptoms that could reasonably interfere with work related activities. Likewise, if a claimant claimed a car accident as a reason for good cause for noncompliance, but then brought in medical records documenting the accident happened the day after claimant was noncompliant, good cause could not be granted, because the claimant could not reasonably say he was injured before the accident.

Thus, while the regulations do not require exact dates, the submitted medical verification should be reasonably close to the time of the alleged noncompliance; however, the definition of the words “reasonably close” are nothing more than an estimate, and will vary from case to case, depending on the circumstances.

In the current case, claimant's condition was well documented far ahead of the dates of noncompliance; in fact, by sending claimant to a crowded JET class instead of to MRS to evaluate his disabilities and work readiness, it is likely that claimant's condition was aggravated by the Department. [redacted] letter stated that claimant was currently unable to function in a Work First environment. It is reasonable to assume that [redacted] would not have written this letter without first examining the claimant, and he was most likely to have been examining the claimant with regards to his mental functioning in an attempt to provide verification. In other words claimant alleged that he was ill, he went to the doctor to get verification that he was ill, and the doctor verified that claimant was indeed ill.

The Department's contention that they could not accept this letter as proof of good cause because [redacted] used the word "currently" is incorrect. Under our test— did the claimant provide verification of an illness that could reasonably be expected to interfere with work related activities during the time of the noncompliance?—claimant's letter shows that he was unable to work at the time of the evaluation, and is more than sufficient proof to find good cause. Viewed in conjunction with the claimant's past history of social anxiety disorder, it would be reasonable to take claimant's verification as proof that claimant's noncompliance was caused by his illness. The word "currently" in case at hand, common sense tells us, would mean a period of time shortly before the examination. Combined with claimant's medical history, that period of time encompasses the time of noncompliance. Therefore, claimant has met our test, and a finding of good cause was directed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had good cause for his failure to attend the JET program during the on 12-30-08 and 1-5-09. Furthermore, given that claimant's condition was likely one that

could have been aggravated in a mainline JET class, the Department should have instead scheduled claimant for an MRS evaluation.

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, and schedule claimant for an MRS evaluation.

/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: [redacted]