

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: 2009-17174
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 29, 2009
Washtenaw 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 29, 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 [REDACTED].
- (2) On 12-15-08, claimant contacted JET to let them know that she would be late to orientation because her child did not start school until 9:15am, and she needed to be with her child until then, because her child was disabled.

(3) Claimant's JET caseworker advised claimant that this was not an acceptable reason for tardiness to JET orientation and that claimant would not be allowed in if she was late, and that other options should be explored.

(4) Claimant's daughter is afflicted with a condition known as Hereditary Autonomic Sensory Neuropathy; this has caused a number of symptoms that required claimant's constant care and attention.

(5) Claimant's daughter requires skilled care outside that of a normal day care provider; claimant's daughter is provided skilled care at her school, but no skilled care at her home besides claimant herself.

(6) On 1-27-09, claimant was sent a DHS-2444, Notice of Noncompliance, for a failure to report to the JET program in a timely manner; a triage was scheduled for 2-3-09.

(7) On 2-3-09, claimant appeared for the triage and explained the situation; however, good cause was not granted.

(8) On 11-17-08, a triage was held.

(9) At the triage, claimant was told that she did not have good cause for a failure to attend Work First, because a deferral was not granted because the Department held that child care issues were not a reason for good cause.

(10) Claimant was told her medical documentation of her child's illness was not satisfactory.

(11) Claimant was offered a DHS-754 at the triage and told that she needed to sign the form in order to keep her benefits.

(12) Claimant signed the DHS-754 and returned to JET.

(13) Claimant was assigned to return to JET on 2-23-09.

(14) On 2-23-09, claimant was once again tardy to JET and was not allowed into the class.

(15) Claimant was deemed in noncompliance, and her FIP grant was put into negative action on 3-3-09.

(16) On 2-27-09, claimant filed for hearing, and the negative action was deleted pending the outcome of the 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. 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 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, non-compliance 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 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. For the first occurrence of noncompliance, 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...

Claimant alleged that when she submitted evidence of her child's illness as her reason for being late to her JET classes, she was told by the Department at her triage that her medical excuse was not good enough. The Department was unable to present anybody who was a witness to the triage at the hearing to rebut this testimony.

The case notes show that claimant contacted JET to discuss the fact that claimant needed to wait with her daughter until she went to school; the notes further show that the JET

caseworker told claimant that the claimant would need to make alternative plans. The Department testified at the hearing that JET was capable of making a reasonable accommodation for the claimant in light of her daughter's situation, but testified that they were unaware of the situation at the triage.

However, as the Department was unable to present a witness who was actually at the triage, the undersigned must conclude that the claimant did present her evidence and it was rejected by the Department. Furthermore, the great weight of the evidence indicates that the good cause determination was based solely on the child care factors of PEM 233A. While it is true that if this was the only reason presented by claimant for good cause, a finding of no good cause would be appropriate, the claimant also presented evidence of illness. Therefore, it is the Administrative Law Judge's finding that the Department failed to take into account the illness factors of PEM 233A, and was thus in error.

Had the Department taken these factors into account correctly, it would have been inescapable that the evidence claimant presented was exactly the sort of illness that was contemplated by PEM 233A. Admittedly, this illness is ongoing, but the Department testified that alternative arrangements could be made to accommodate claimant, and the claimant testified that she is willing to attend JET—just not at a time when she had to abandon her disabled daughter. Therefore, for the reasons stated above, the initial finding of no good cause was incorrect, and no penalty should have been attached to the claimant's case.

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 and thus must agree with the good cause determination. The undersigned must respectfully disagree.

The initial good cause determination was faulty; it was analyzed under the wrong regulations and never took into account claimant's circumstances. Therefore, it follows that the Department erred in issuing a DHS-754 in the first place. Furthermore, even if the issuance wasn't in error, it is unclear whether the Department advised claimant that she could request a hearing as to the good cause determination. While it is true that the Department testified that the claimant was told directly that she could request a hearing, the Department admitted under oath that neither of its representatives at the hearing were actually at the triage, and were only testifying to the correct procedures. It appears very likely that the claimant was told that her benefits depended upon her signing the form; thus claimant was effectively denied a hearing into the good cause 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.

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 her failure to attend the JET program during the months of December 2008 and February 2009.

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. Claimant is to be rescheduled for all JET classes after the

Department meets with claimant in order to discuss and implement reasonable accommodations, with regard to the claimant's situation.

/s/

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

Date Signed: May 8, 2009

Date Mailed: May 8, 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]