STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: ███████████

           Claimant

Reg. No: 2009-17445
Issue No: 1038
Case No: ███████
Load No: ███████
Hearing Date:
May 6, 2009
Calhoun 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 May 6, 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 Calhoun County.

(2)   On 2-16-09, claimant turned in a job log that showed she applied at ███████████

███████████

(3)   In the job log, claimant noted that she sent an application and tried to call, but they were closed.

(4)   The ██████████████ in Battle Creek had closed permanently several months before.

(5)   The business is still located in the phone book.

(6)   Internet searching still lists the business as open.

(7)   On 11-3-08, claimant signed a JET/Work First Requirements paper where she acknowledged that "Falsification of job leads sheet" was grounds for noncompliance.

(8)   On 2-17-09 claimant was ostensibly notified that she was being considered in noncompliance; however no DHS-2444, Notice of Noncompliance, was entered into evidence.

(9)   On 2-24-09, a triage was held and claimant was not given good cause. No evidence of an actual good cause determination was entered into the record.

(10)   On 2-24-09, claimant case was placed in negative case action and was sanctioned for 3 months.

(11) This is claimant's second incident of noncompliance.

(12) On 3-9-09, claimant filed a request for hearing, stating that she disagreed with the Department's determination.

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 pg. 1.

The penalty for noncompliance without good cause is FIP closure.

The Department argued at hearing that placing a closed business on a job search log is

grounds for immediate noncompliance and sanction, and pointed out Department Exhibit 5,

JET/Work First Requirements, as evidence of this. After examination of the evidence, the

undersigned must respectfully disagree.

The exhibit states clearly that "falsification of job leads sheet" is grounds for noncompliance. However, the Department is extrapolating the term, "falsification" one step too far.

Black's Law Dictionary, (7th Ed. 1999) defines the term falsify as:

> **Falsify,** *vb.* **1.** To make something false; to counterfeit or forge.

This definition contains an element of intent; in order to make something false, a person has to know that this is what they are doing. Clearly, if the claimant was falsifying her job log, this would indeed be grounds for immediate noncompliance and sanction; and while it is true that claimant did put a business application on her job log for a business that had closed, the Department has not met its burden of proof in proving that claimant did so knowingly, or with intent. Making a mistake on a log is not necessarily a falsification, and the Department has not proven that claimant put the business on her log in order to falsify it.

Claimant testified at hearing that she picked the business out of the phone book, got the address, filed out her résumé, and sent it to the business. When she tried to call the business, it was closed, and she noted that on her job log. The Department contends that this is prima facie evidence of noncompliance; the undersigned disagrees. This is only evidence that claimant made a mistake. Additionally, if claimant had been intending to falsify her job logs, the Administrative Law Judge doubts that claimant would have noted on her sheet that the business was closed. Furthermore, the Administrative Law Judge looked up the business on the internet; research shows that a cursory examination, as one might do when looking for any job, gave an address and location for the business, which would give rise to a presumption that the business was still open.

This is not to say that claimant did not make a mistake; however, the Department has not proven that this mistake was intentional, or placed there as an attempt to falsify her logs, as is required by JET policies. A mistake can sometimes be a falsification, but not always. The Department has not met their burden of proof.

Furthermore, the Department has not met other burdens of their case; they have failed to attach a DHS-2444 which showed that the claimant was in noncompliance, nor have they proven that a good cause determination was made. However, these are mainly academic; in order to get to a good cause determination, the Department must first prove that claimant was in noncompliance to begin with. They have not. A mistake does not necessarily equal a lie.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not met their burden of proof with regards to claimant's alleged noncompliance.

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

The Department is ORDERED to reopen claimant's case retroactive to the negative action date. The Department is further ordered reschedule the claimant for any required JET classes.

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

Date Signed:_ May 19, 2009_____

Date Mailed:_ May 19, 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: