

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: 2009-17512

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 6, 2009

Muskegon 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 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 Muskegon County and active with the JET program.

(2) On 1-7-09, claimant was notified that she had two unexcused absences from the JET program.

(3) On 1-13-09, a DHS-2444, Notice of Non-Compliance was sent to claimant, scheduling a triage for 1-26-09.

(4) Claimant attended the triage on 1-26-09, and no good cause was granted.

(5) Claimant agreed to get back into compliance with the JET program per PEM 233A, and was referred back to JET with a start date of 2-2-09.

(6) Claimant did not attend JET on 2-2-09.

(7) On 2-5-09, claimant contacted JET to tell them that she did not remember to attend, and claimed responsibility.

(8) Claimant then called her DHS caseworker, and told the caseworker that she had a medical reason for not attending the JET program.

(9) The negative action date on the case was 2-12-09; claimant did not return proof of good cause by this date.

(10) On 2-12-09, claimant's FIP case was closed for noncompliance, and a 3 month sanction was applied.

(11) On 2-27-09, claimant brought in a doctor's note that claimant said excused her from compliance with work-related activities for the date in question.

(12) The doctors note was entitled "CERTIFICATION FOR RETURN TO SCHOOL AND WORK", was dated 2-19-09, and stated that claimant had been dealing with unspecified medical issues that included depression and anxiety.

(13) The doctor's note did not contain any limitations, and was signed by a nurse practitioner.

(14) On 2-27-09, claimant reapplied for FIP.

(15) The FIP application was denied due to claimant's case being under sanction.

(16) On 3-26-09, claimant requested a hearing, alleging that she had been told that she needed a medical excuse to reapply for FIP and that she provided such excuse.

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 and a case sanction, the length of which is determined by the number of case penalties claimant has accrued. However, for the first occurrence of non-compliance, on the FIP case, the client can be excused, as happened in the current case. PEM 233A. Claimant's under case sanction are ineligible for FIP benefits.

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. 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.

Before we can address the issue of claimant's FIP application while under sanction, we must first address whether the sanction was proper.

Claimant did not dispute the issue that led to the first triage in which claimant was given a DHS-754. Claimant did dispute the issue that led to her case closure when she failed to get into

compliance, stating that she should have had good cause by presenting a note from her doctor. This Administrative Law Judge must respectfully disagree.

Leaving aside momentarily the fact that claimant submitted her evidence of good cause more than two weeks after the negative action date, the good cause she provided was insufficient to prove good cause. Claimant's sole evidence of good cause is a doctor's note—that is not signed by a doctor, but rather, a nurse practitioner. While the medical qualifications of the signer are not enough to disqualify a good cause excuse on their own, they are still a factor. A bigger factor however, is the utter un-specificity of the note. The note contains no limitations, no explanation of the claimant's condition, and no indication as to how claimant's condition could interfere with work-related activities. The note even leaves us guessing as to the claimant's condition; it states that claimant has "medical issues" and is dealing from "depression and anxiety". Without commenting on the fact that the writer of the letter was unqualified to present a psychological diagnosis, this statement tells a reader absolutely nothing as to whether the claimant could attend work. Furthermore, it is dated 2-19-09, 17 days after the date of noncompliance. While it does state that claimant has been under care for these issues for 8 months, claimant was attending JET for a good deal of this time. Therefore, these conditions must not interfere with work-related activities all of the time. There is no indication that claimant's condition worsened, nor any indication that claimant was unable to work on the dates in question. Such a note is useless for providing proof of good cause.

Of course, even if such a letter did provide evidence of good cause, it is doubtful as to whether this fact would change the undersigned's decision. Claimant submitted this evidence more than two weeks after the negative action date; the regulations provide that proof of good cause must be submitted before the negative action date. Our proper test in any situation is not

whether the Department's decision was correct, but rather, whether or not the Department made the correct decision using the information it knew, or should have known, at the time. Clearly, the Department was unaware of the situation, and was not made aware of the situation for more than two weeks after it had made its decision. Therefore, the Department's decision to close and sanction claimant's case was the correct one.

As the claimant was under sanction, the Department could not legally have reopened claimant's FIP case when she reapplied on 2-27-09. Any claimant who is under sanction is ineligible for FIP. Claimant will not be eligible to reapply for FIP until 6-12-09. Thus, the Department was correct when it denied claimant's 2-27-09 FIP application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not have good cause for her failure to attend the JET program during the month of February, 2009. The Department was correct when it closed claimant's FIP case and placed it under sanction. Furthermore, the Department was correct in its decision to deny claimant's 2-27-09 FIP application.

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

/s/

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

Date Signed: May 18, 2009

Date Mailed: May 18, 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:

