

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: 2009-17723

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 23, 2009

Ionia 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 23, 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 Ionia County.
- (2) Claimant was referred to MRS as part of her JET assignment because claimant alleged disability.

- (3) Claimant met all JET participation requirements through 2-14-09.
- (4) On 2-18-09, DHS received a doctor's note from claimant's doctor, excusing claimant from work for 2-16-09 through 3-3-09.
- (5) Claimant did not go to JET or MRS during this time period.
- (6) On 2-25-09, MRS reported that claimant's case was closing for lack of documentation regarding her alleged disability.
- (7) This notification indicated that claimant showed signs of malingering during a physical exam, which invalidated the results; however, medical records could alleviate concerns from MRS.
- (8) On 2-26-09, DHS sent claimant a DHS-2444, Notice of Noncompliance, which scheduled a triage on 3-3-09.
- (9) Claimant attended the triage, and brought her doctor's slips.
- (10) Claimant was told at this triage that her doctor's notes were invalid, and the triage instead focused on whether claimant's caseworker believed claimant had medical problems, and what claimant had done to resolve the medical problems.
- (11) The Department also felt at the triage that claimant's result on her physical exam meant that she was not cooperating with MRS and a separate cause for noncompliance.
- (12) DHS did not allow claimant a chance to submit or request medical records for MRS evaluation.
- (13) Before the triage, emails were sent between the participants.
- (14) These emails stated, among other things that the caseworkers involved felt "95% sure that you can have a successful triage just based on the fact that she did not follow up with MRS".

(15) The emails also contained statements regarding claimant's doctor's notes that stated: "She is playing the game well".

(16) Claimant was denied good cause at the triage, based on DHS's belief regarding claimant's illness, and was sanctioned appropriately.

(17) This is claimant's first instance of noncompliance, but no DHS-754 was offered.

(18) On 3-16-09, claimant filed for hearing, alleging that she has medical problems, doctor's notes excusing her from work-related activities, and that DHS would not consider these notes.

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 second incident of noncompliance, and was thus ineligible for second chance procedures. 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. 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.

The Department made two arguments; first, that they did not believe that claimant had an illness that could prevent work-like activities and her doctor's notes were invalid; and second, that the claimant was non-cooperative with Michigan Rehabilitative Services (MRS), and therefore, noncompliant.

There is no part of PEM 233A that allows for a Department of Human Services' caseworker to substitute their judgment for that of a licensed doctor. Such a regulation would be unworkable and would introduce rampant abuse into the system. PEM 233A only requires verification of an illness that could reasonable be expected to interfere with work related activities during the time period in question. Any caseworker or Department representative that makes such a determination on their own, ignoring the findings of a licensed doctor, is committing plain error. A caseworker has no right to determine that their medical judgment is superior to that of an actual doctor.

Claimant testified that when she presented her note, her caseworker told her that it was invalid. Department Exhibit 13, the Good Cause Determination, showed that the reason behind a finding of no good cause was because claimant "gave conflicting answers" regarding the nature of her illness, and questioned the way claimant had sought treatment for her illness. Department Exhibit 19, emails sent between MRS and claimant's JET caseworker and DHS caseworker, showed that the Department had decided that claimant was "playing the game". This is not a reason to find no good cause; good cause only requires that an illness be verified. Claimant presented that verification. The Department decided that their medical judgment was somehow better than that of claimant's doctor. Therefore, the good cause determination was error.

The Department also contended that claimant was in noncompliance because they felt that she was not cooperating with MRS. Leaving aside the fact that the Department was basing the noncompliance originally on claimant not attending JET during the period of time when she was excused by a doctor's note, it is unclear exactly what the issue with MRS was. Furthermore, the Department lost credibility into the subject when it became obvious that they were searching for a way to "win" against the claimant in the triage.

With regard to the noncompliance with MRS, the Department based their case on a single email from an MRS counselor who noted that claimant seemed to be malingering in a functional capacity assessment, which invalidated the results of the test. No official results of the test were submitted by the Department. Because MRS was unable to document the disability, they were closing the case. The MRS counselor also noted in her email that she had discussed the results with the claimant and had suggested the need to get documentation from her doctor.

The undersigned does not see how this constitutes noncompliance with MRS. If MRS determined that claimant could not support her allegation of disability, claimant should have been sent back to the full JET program if she could not get medical documentation of the disability. At no point did claimant refuse to attend MRS, refuse to take MRS exams or exhibit behaviors of noncooperation, as is more consistent with cases of noncompliance. Even if claimant was malingering on the exam, this is not proof of noncompliance; it is only proof that claimant was malingering. Malingering behavior is not necessarily an attempt to defraud the agency; many times, malingerers are only attempting to show a person how sick they believe themselves to be, because they believe the tester will not believe them otherwise. This behavior, though correctly invalidating a test, is not necessarily proof that the claimant has no disability at all. The correct action would be to either retest, or to insist on the claimant providing medical documentation. Regardless, it is not evidence of noncompliance.

This is of course, assuming that the Department has any credibility at all to have made an impartial good cause determination. Department Exhibit 19, which consists of emails between various members of the Department involved in the triage, shows discussion among the group that invalidates any finding of no good cause. One email shows the Department speculating on whether they could have a “successful triage” based on the fact that claimant had invalid test results with MRS. This implies that the Department felt a “successful triage” would be one with which they managed to sanction the claimant. Another email states that, with regard to claimant providing a doctor’s note with regard to JET activities, claimant is “playing the game well”.

The triage process is not a game. It is not a contest, and there are no “sides”. There are no players, there are no teams, and one outcome is not preferential to another. The triage is a legal process, in which the Department must make an impartial decision with regard to a claimant’s reasons for being noncompliant. It does not “win” if it finds a way to sanction the claimant. The claimant is not “playing the game” if she provides a medical excuse. A “successful triage” is one in which the client and the Department come to a mutual understanding of what each other’s rights and responsibilities are, and the process comes to the result that is legally correct. The fact that the Department was treating this process like a game is extremely troubling, and calls into doubt the credibility of these particular representatives, as well as their ability to make impartial decisions and treat their clients in a fair, professional manner.

Regardless, it is clear that this was not a “successful triage”, whatever the Department may have thought at the time. The process was carried out unfairly, and the wrong result was achieved. However, the triage was unsuccessful, not because the claimant “won”, but because the Department did not come to the correct result, no matter the result of that outcome to the claimant.

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 February, 2009.

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

The Department is ORDERED to restore claimant's FIP benefits retroactive to the negative action date if the benefits are currently in cessation; reschedule the claimant for all appropriate JET classes, MRS evaluations, and/or meetings; and remove the negative action from the claimant's case.

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

Date Signed: May 7, 2009

Date Mailed: May 7, 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:

