

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: 2009-17728

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 12, 2009

Genesee 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 12, 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 Genesee County.
- (2) Claimant was taking part in the EFIP program; however, her employment ended and she lost her EFIP status.

(3) Claimant had a review on 1-2-09, and was given an assignment notice to attend JET for re-engagement on 1-5-09.

(4) Claimant had a doctor's appointment for pre-surgery during this week and was unable to re-engage with JET at this time.

(5) DHS was notified by JET that claimant's referral was too old regardless of claimant's surgery issues, and claimant needed to have a new referral to JET to start her with orientation.

(6) Claimant was subsequently referred to JET through a DHS-4785, JET Appointment Notice, for orientation on 1-20-09.

(7) Claimant did not attend this orientation, due to illness.

(8) DHS accepted this reason and rescheduled claimant for JET.

(9) On 1-29-09, DHS sent claimant a DHS-4785 that scheduled claimant for orientation on 2-2-09.

(10) Claimant had started school and a home help provider job by this time.

(11) Claimant's school and job conflicted with Monday orientation start dates, and she notified JET of this conflict.

(12) JET agreed to reschedule claimant to an alternate Thursday orientation date.

(13) DHS agreed to accommodate the scheduling conflicts, and changed claimant's start date to Thursday, February 12, 2009.

(14) DHS did not send a notification of this start date, and claimant was never notified that she had to attend JET on that day.

(15) This date was not updated or contained in any of the JET case notes.

(16) On 2-12-09, claimant's DHS caseworker added to the JET case notes that claimant "has a referral given to her already".

(17) Claimant did not attend JET on 2-12-09.

(18) On 3-3-09, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage date of 3-11-09.

(19) Claimant attended the triage, and explained that that she did not receive notification of the appointment.

(20) Claimant was told that her excuse was not acceptable because claimant had had several opportunities to attend JET.

(21) Furthermore, DHS maintained that claimant could have used the previous referral for 2-2-09 to attend the 2-12-09 class, because claimant was the one who had scheduling difficulties, and that DHS should not have had to send a new notice.

(22) On 3-20-09, claimant requested a 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 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.

The penalty for noncompliance without good cause is FIP closure. 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.

With regard to the claimant’s initial incident of noncompliance, the undersigned is having difficulty determining whether the claimant was ever noncompliant to begin with.

The Department testified that claimant was notified regarding the 2-12-09 JET appointment when claimant worked out alternative accommodations for her orientation in light of her job and school commitments.

Claimant testified that while JET agreed to alternative arrangements, she was told she would receive an appointment notice that would let her know when she needed to attend.

It is uncontested that claimant was not sent an appointment notice for the 2-12-09 appointment date; the Department argues, however, that no notice was needed, because claimant should have already known about the appointment.

The undersigned disagrees.

The Department has presented no evidence that the claimant was notified in any way regarding her appointment. No DHS-4785 was sent. JET officials wrote nothing in claimant's MIS case note log (Department Exhibit 5) after 1-13-09 in which they noted claimant would need a new referral because claimant's former referral was stale. There is nothing in the case notes from JET that indicate that claimant had been notified about the 2-12-09 appointment. The closest thing the case notes contain is a note, from claimant's DHS caseworker, dated 2-12-09, and listed as a message for JET, that claimant will need an accommodated orientation. Given that claimant was supposed to attend on 2-12-09, it seems more likely that JET wasn't notified that claimant was supposed to attend until the day of her supposed appointment.

The participant history part of the case notes indicate that claimant could have attended by 2-27-09, but once again, the Department has presented no evidence that claimant was ever notified of this. The Department argued that JET "would have notified" claimant over the phone when claimant requested accommodation; this argument does nothing to satisfy the Department's burden of proof. It is not enough to argue what would have, or should have, happened. It is only sufficient to argue with proof of what did happen. The Department has not met this burden.

Therefore, the undersigned thus holds that the claimant did not receive notification of the JET meeting as the Department contends, and was therefore compliant with work related

activities. The Department's correct course of action at the triage would have been to reschedule the claimant at that time for JET, as the claimant was never in noncompliance to begin with.

Finally, the Department argues that claimant was given many chances to attend JET, and did not re-engage satisfactorily. The Administrative Law Judge finds this argument irrelevant. In the previous attempts at re-engagement during the month of January, the Department fully accepted claimant's reasons for not attending. It cannot now re-examine them and use them as a reason to find claimant noncompliant. What happened during previous attempts is not relevant to the matter at hand; all that is relevant is the issue of whether claimant was compliant with work related activities for the engagement attempt on 2-12-09. Claimant was not notified that she needed to attend class on this day. Therefore, claimant was compliant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was in compliance with the JET program during the month of February, 2008, as she was never notified of any appointment.

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, reschedule claimant for all required JET classes, and restore claimant's FIP benefits retroactive to the date of case closure.

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

Date Signed: May 26, 2009

Date Mailed: May 27, 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:

