

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: 2009-19370

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 26, 2009

Kalamazoo 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 26, 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 Kalamazoo County.

(2) On 3-3-09, claimant and her partner were sent a DHS-2444, Notice of Non-Compliance, after DHS had been notified that both claimant and her partner had been noncompliant in the JET program.

(3) On 3-17-09, Kalamazoo County DHS switched over to the BRIDGES case management system and the policies that were developed with the system.

(4) The notice scheduled a triage for 3-18-09 at 9:30am.

(5) Claimant and her partner did not attend triage.

(6) Claimant's FIP case was closed in a response to claimant's missed triage appointment.

(7) No DHS-71 was filed; however all pertinent case notes, including the hearing summary and the FSSP, read "No call/No show for triage."

(8) Claimant's case and her partner's case were sanctioned and closed; because a penalty was assessed for each participant, 2 penalties were assessed.

(9) This is claimant's first incident of noncompliance; however, because a penalty was also assessed on her partner, no DHS-754 was offered.

(10) On 4-9-09, claimant filed a request for hearing, alleging that she had been compliant.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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. BEM 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. BEM 230A, p. 1. This is commonly called “non-compliance”. BEM 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...” BEM 233A p. 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. BEM 233A. The penalty for noncompliance without good cause is FIP closure. However, for the first occurrence of non-compliance on the FIP case, the client can be excused. BEM 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. If

a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. 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 must be considered, even if the client does not attend.** BEM 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. BEM 233A.

It is important to note that while claimant's alleged noncompliance occurred under the old CIMS system (and thus, were governed by the Program Manuals and PEM 233A), claimant's triage was held after the conversion to the new BRIDGES system (and thus, would be governed by the BRIDGES Manuals and BEM 233A). The negative action was decided under the BRIDGES Manual. Therefore, we must first determine whether the Program Manual or the Bridges Manual applies to the current case; while the differences between the two are small, there are differences nonetheless.

Claimant's alleged actions that led to the noncompliance charge took place while the Department was following policies found in the Program Reference Manuals. The triage was scheduled under these same policies. However, the triage itself took place under the BRIDGES Manual. No negative action had been assessed by the time of the triage. The triage itself is simply a chance for a claimant to present evidence of good cause, after which, a negative action will be placed, if appropriate.

The triage itself is only a procedure; it is not an action taken by the Department or a penalty assessed to the claimant. The Department may set its own procedures however it wishes, as long as these procedures are codified in policy and law. The claimant has an absolute right to

be judged under the laws that were in effect at the time of the incident; however, the procedures that judge the claimant can change at any time, with adequate notice, as long as these changes are consistent with Department policy. Therefore, while the claimant's actions should be judged under the PEM's, which were in place at the time the alleged action took place, the question of whether the triage procedures were adequate should be analyzed under the manual that was in place at the time the triage was held. In the current case, the procedure—the triage—was held at a time when the BEM's were in place. Thus, while the claimant could present evidence that her noncompliance was excused under the PEM's at this triage and at the hearing, the procedure itself, which comprises the nuts and bolts of the triage, should have been analyzed under the new BEM guidelines.

However, as the reasons given for awarding good cause in the case of noncompliance are identical under both the PEM's and the BEM's, the evidence and arguments the claimant could present would be identical no matter the policies that govern the triage.

The format of the triage itself does differ from what the old policies demanded. Under the old policies, the Department was required to fill out a DHS-71, Good Cause Determination, to track its reasoning for awarding or denying good cause for incidents of noncompliance. Under the new policies, no such form is required—the only requirement is that the Department makes an actual determination of good cause. No DHS-71 was filed in the current case. This is acceptable according to the new policies, and the Department shall not be penalized for not using this form.

That being said, the Department's procedures towards overcoming claimant's non-compliance were still inadequate. While there are legitimate questions as to whether the claimant could have attended the triage, or whether the claimant even had good cause, or whether the claimant was noncompliant, as claimant argued, these questions are, ultimately, irrelevant. The

only relevant fact is that BEM 233A requires the Department to make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. Department Exhibit 1, the Hearing Summary, states that the noncompliance was assessed because claimant was a no call/no show to the triage. No mention of an independent good cause determination is made. Department Exhibit 3, the FSSP states that the reason for the determination of no good cause is that the claimant did not show up for the triage. While the Department testified that an independent determination was made, no proof of this testimony was offered. No person who was at the triage was present for the hearing. The Department representative admitted under questioning that she was unsure as to whether the Department actually did make an independent determination. Therefore, as no independent evidence has been offered to show that a good cause determination was made beyond noting that claimant did not show up for the triage, and that all evidence in the file shows that the reason for the noncompliance assessment was because claimant did not show up for the triage, the undersigned must hold that the Department did not make an individual assessment. This is plain error.

DHS is required to hold the triage without the client, and discuss and consider all factors that are known about the client that may have contributed to good cause. A good cause determination must then be made, using these known factors. BEM 233A, p. 9. The available evidence shows that this determination was not made, and implies that the triage was not held, thus placing the Department in error.

This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures, and that the claimant's case should never have closed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was in error when they failed to make a good cause determination.

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

The Department is ORDERED to reschedule a triage for the claimant, and reopen claimant's case retroactive to the date of case closure. The Department is further ORDERED to institute any appropriate triage and post-triage procedures, including a good cause determination and a consideration of whether claimant was noncompliant in the first place, as is consistent with the BRIDGES Eligibility and BRIDGES Administrative Manuals for a first or second incident of non-compliance.

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

Date Signed: June 16, 2009

Date Mailed: June 17, 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:

