

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: 2009-21455

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 25, 2009

Washtenaw 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 June 25, 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 Washtenaw County.
- (2) Claimant was scheduled to attend JET orientation on 10-3-08.
- (3) Claimant did not attend JET orientation on that day.

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

(5) Claimant was allegedly sent a DHS-2444, Notice of Noncompliance, which scheduled a triage date of 2-19-09.

(6) However, this notice is undated; it is not known if it was ever sent.

(7) Claimant did not attend the triage.

(8) Claimant was not awarded good cause because she did not attend the triage.

(9) No DHS-71 was ever filed.

(10) On 4-7-09, claimant's case was sanctioned and closed.

(11) On 4-17-09, 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 “noncompliance”. 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.

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 10-3-08 JET appointment.

Claimant testified that she never received the notice referring her to JET.

The Department has presented no evidence that the claimant was notified in any way regarding her appointment. No DHS-4785 was in the file. There is nothing in the case notes from JET that indicate that claimant had been notified about the appointment. A properly addressed letter gives rise to a presumption that a notification was sent; no copy of this letter has been produced. It is standard Department policy to keep copies of all correspondence. No copy could be produced. The Department testified that these notifications are sent from Lansing, and are never included in the case file; the undersigned's prior experience tells him that this is not true. All correspondence must be included in the case file. If the Department cannot prove that the letter was sent, the undersigned must conclude that the letter was never sent.

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.

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 October, 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: August 3, 2009

Date Mailed: August 4, 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

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