

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: 2009-22486

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 18, 2009

St. Clair 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 18, 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 a FIP recipient in St. Clair County.
- (2) Claimant was working at least 15 hours per week during the time of alleged noncompliance.
- (3) Claimant was also preparing for an externship in late October, 2008.

(4) Claimant missed some meetings at her JET site during the first week of October, 2008, and allegedly did not meet her required participation hours.

(5) On 10-9-08, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for 10-16-08.

(6) The triage was held, but the evidence of record is unclear as to whether the triage was held on this date or on 10-20-08.

(7) There is no evidence a DHS-71 was ever completed.

(8) Claimant was presented with a DHS-754, First Noncompliance letter; however available evidence indicates that the DHS-754 was completed to allow claimant more time to gather evidence of good cause; it is not clear if this was the case.

(9) This form had claimant returning to JET on 10-20-08.

(10) Claimant was then apparently deferred from JET pending approval of a medical deferral.

(11) The medical deferral was never returned and claimant's case was closed and sanctioned.

(12) On 11-7-08, claimant filed a request for hearing, stating that she did not agree with the Department action.

(13) This request was not processed; claimant was subsequently sanctioned and despite requests to schedule a hearing, no hearing request was processed.

(14) Claimant's request for hearing was finally processed after claimant's attorney filed another hearing request in April, 2009.

(15) Claimant was represented at hearing by [REDACTED]

[REDACTED].

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).

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 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.

An FIP/RAP group containing only one work eligible individual parent when the youngest child in the group is 6 years old or greater must complete 30 hours of work-related activities per week to stay in compliance. Work related activities must contain at least 20 hours per week of “core activities”. Core activities include vocational educational training, including condensed educational training. PEM 228. Other core activities include employment, job search activities and on the job training.

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:

PEM 233A states, in relevant part, that:

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is No Good Cause, within the negative action period, do the following....

2. Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.

3. Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period...

5. If the client accepts the offer to comply and agrees with the department’s decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754...

9. When the client verifies compliance within the negative action period and is meeting the assigned activity that corrects the noncompliance, delete the second negative action. If the case closed in error, reinstate the case with no loss of benefits...

The Administrative Law Judge admits that he is unsure as to what actually happened in this case. The submitted case notes and subsequent testimony has done nothing to alleviate his

confusion. From the exhibits, the Administrative Law Judge has pieced together a rudimentary timeline—claimant may or may not have been working during the time of the alleged noncompliance, claimant was put into noncompliance because she didn't attend JET activities during the time and then a triage was scheduled. At the triage, no good cause was granted, and then a DHS-754 was presented. The evidence indicates that this may have been granted to allow for a medical deferral, but the undersigned is unsure as to why a manager would have presented the DHS-754 for that reason. No DHS-71, Good Cause Determination was ever filled out, in violation of PEM 233A. Mixed into all of this is the fact that claimant was due to start an externship in late October, but had possibly refused potential externships before.

The undersigned, even after a full hour of testimony, is still unsure exactly what happened. However, based on what has been presented, the undersigned believes that the Department has not met its burden of proof in showing that the claimant had failed to attend JET activities.

The Department's evidence packet did not present any official record of how many hours claimant had been granted during the time in question. This is important, given that the MIS case notes in the case seem to show that claimant may have been working at least 15 hours a week at the time. While it is clear that claimant did miss some JET activities, it is not clear that claimant missed enough of these activities to be considered noncompliant. Given the fact that this case was picked up again almost 6 months after the fact, it is no surprise that the documentary evidence is flawed in many places.

The Administrative Law Judge cannot grant noncompliance without a full evidentiary record, and what was presented, though no fault of the Department representatives, does not meet the burden of proof required to find that claimant was noncompliant. Even if there was

indication that claimant failed to attend required activities in October, the Department has not presented a DHS-71, Good Cause Determination, that showed that the correct procedures were followed in sanctioning claimant in the first place.

Given the holes in the evidentiary record, there is serious doubt that the Department, if the undersigned were to rule that this procedure must be corrected, would be able to make an informed decision into good cause. For that reason, the undersigned holds that the correct action, given claimant's subsequent externships and compliance, is to simply find that there is not enough evidence to warrant a noncompliance action.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was never in noncompliance.

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

The Department is ORDERED to remove all negative actions and sanctions placed on the claimant in the above matter. The Department is further ORDERED to restore all benefits to claimant that were lost as a result of these negative actions. Claimant should be rescheduled for all required work-related activities, if applicable.

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

Date Signed: July 20, 2009

Date Mailed: July 20, 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:

