

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: 200922590
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 2, 2009
Saginaw 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 July 2, 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 Saginaw County.
- (2) Claimant was scheduled for JET classes with a final start date of April 20, 2009.
- (3) Claimant did not attend JET on these dates.
- (4) On April 24, 2009, claimant was referred to triage by the JET Program.

- (5) On May 1, 2009, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage on May 12, 2009.
- (6) Claimant attended the triage.
- (7) At the triage, claimant first stated that her son had been sick.
- (8) After being invited to provide documentation, claimant alleged that she had needed child care.
- (9) Claimant then stated that she had no transportation to JET classes.
- (10) Claimant supplied no verifications at the triage.
- (11) The Department determined that claimant did not have good cause and was thus noncompliant.
- (12) This was claimant's second penalty.
- (13) On 5-11-09, claimant filed for hearing, alleging that she disagreed with the actions of the Department.

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, non-participation can be overcome if the client has “good cause”. Good cause is a valid reason for non-participation with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participatory person. PEM 233A. A claim of good cause **must** be verified and documented. PEM 233A states that:

“Good cause includes the following...

No Transportation

The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.”

The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused. This is not applicable in the current case. PEM 233A.

Furthermore, JET participants can not 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 has provided sufficient proof to show that claimant was not meeting the participation requirements of the JET program. Claimant herself admitted that she did not go to assigned JET classes. Therefore, the claimant has the burden of proof to show that she had good cause for failing to meet those participation requirements.

The Department testified that claimant changed her story several times during the course of the triage, and offered no verification for any claim she made. Claimant offered no verifications, and because of the inconsistency of her excuses at the triage, the Department was unable to award good cause for claimant's nonparticipation with JET. Claimant was subsequently found noncompliant.

Claimant's testimony at the hearing was similar; her arguments changed from one moment to the next and she seemed unable to settle upon any one justification for her failure to participate with JET. Her testimony was inconsistent, and riddled with flaws. In light of this demeanor, the undersigned was unable to assign claimant's testimony any credibility. As such, the undersigned will base his decision entirely on whether the documentary evidence is sufficient to show good cause, and whether the claimant has provided verification as to good cause.

Unfortunately, in the current case, claimant has not provided the necessary verifications. Claimant first alleged that her son was sick on the day her JET orientation was scheduled; however, claimant did not provide any documentation supporting this claim. A claim of good cause must be verified. PEM 233A. Claimant has not done so. Therefore, the Administrative Law Judge cannot accept this claim.

Claimant argued that she was unable to secure child care for her son on the day in question; however, according to PEM 233A, claims of lack of child care must first show that the Department did not offer or provide child care to the claimant. There is no indication in the file that the claimant ever applied for CDC benefits, or asked for, and was denied, child care. As such, claimant's child care good cause claim must fail.

Claimant next argued that she was not provided with transportation to the JET program, which took place in the City of Saginaw. Claimant's residence is located in a rural area of Saginaw County which does not have public transportation.

The undersigned admits that he is concerned with the Department's admission that a claimant must first attend JET in order to receive transportation to JET. This policy seems to set up an impossible situation for a person living in a rural area without transportation, and it should be noted that PEM 233A specifically allows lack of transportation to be considered as a reason for good cause.

However, the undersigned notes that claimant never provided verification of her alleged transportation woes, and as such, cannot find that claimant had these transportation problems in the first place.

A claim of good cause must be documented. PEM 233A. Claimant never documented that she had a lack of transportation, and in fact, only mentioned the transportation problems when she saw that the Department was not going to accept her claims of illness for her son or her lack of child care as reasons for good cause. The undersigned feels that the Department was correct to view claimant's allegations with some skepticism, and cannot fault the Department for requesting verifications of the same. All claims of good cause must be verified. As claimant provided no verifications, the Department had no choice but to deny claimant good cause per the regulations found in PEM 233A.

It should be noted that the job of the undersigned is to review whether the actions of the Department were correct at the time it made the action, using the information that it had on hand. The Department, at the time it made the action, had no real documentary evidence of claimant's allegations, and was faced with testimony that was, most charitably, inconsistent with itself. The Department denied claimant's request for good cause on the basis that claimant had provided no documentation of her claims. The Administrative Law Judge, looking at the case through the light of what the Department knew at the time, cannot fault that action.

However, claimant argued at the hearing that the Department had been previously supplied with documentary evidence showing that claimant had a severe mental disability that rendered her unable to attend JET. Because the Department knew about claimant's problems at the time, the Department should have awarded good cause under the illness provisions of PEM 233A.

The Administrative Law Judge has reviewed the medical documentation that the Department had on hand, and agrees that the documents provided paint a picture of a claimant who suffers from the effects of a serious mental disability.

However, the documents in question do not indicate that claimant was suffering from the effects of her disability on the day in question in such a manner as to prevent her from attending JET. They do not list any episodes of decompensation, or provide a reason as to why her disability would have prevented her from attending JET on the day in question. The documents, while a general statement of her overall health may prove useful should claimant pursue a disability claim, are not particularly relevant for an inquiry into claimant's health on the day in question.

Furthermore, the Administrative Law Judge would be hesitant to award good cause for claimant's condition given that claimant did not make mention of this illness, or allege that it was the cause of her non-participation until the hearing.


Therefore, as the claimant did not argue that her illness was the cause of her non-participation at the triage, the undersigned cannot consider it. As stated above, our proper test is whether the Department's action was proper at the time the action was taken, using the information it had at hand. Claimant never alleged at the triage that her illness was the cause of her non-participation, and as such, the Department could not have considered it and was correct when it failed to award good cause for it.

Regardless, this does not escape the fact that claimant did not verify any of her statements during the triage. PEM 233A requires all claims of good cause to be verified. Claimant did not. Thus, the Administrative Law Judge must conclude that the Department was correct to not assign good cause.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not have good cause for her failure to attend the JET program during the months of April, 2009.

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



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

Date Signed: 03/19/10

Date Mailed: 03/26/10

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/dj

cc:

