

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: 2009-23759

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 8, 2009

Gratiot 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 8, 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 an FIP recipient in Gratiot County.
- (2) Claimant did not attend JET on 4-20-09.

(3) Claimant had been caring for her sick child on 4-20-09, and secured a doctor's note for verification confirming this.

(4) Claimant had originally turned in a note for a different child, showing claimant being allowed to return to work on 4-20-09.

(5) The second note was faxed to the Department on 5-7-09.

(6) On 4-24-09, DHS sent claimant a DHS-2444, Notice of Noncompliance, which scheduled a triage on 5-5-09.

(7) Claimant did not attend the triage, but called on the day of, to inquire as to why the triage was being held.

(8) Claimant was told at this triage that her doctor's notes were invalid, because it cleared claimant to return to JET on 4-20-09.

(9) Claimant told the Department she would return verification of her other child's illness.

(10) Claimant secured the other note and sent it to the Department on 5-7-09.

(11) This note did not have a signature, but was stamped by claimant's pediatrician.

(12) The Department made a decision as to good cause on 5-7-09 and decided claimant did not have good cause, because she did not return sufficient verification.

(13) The negative action date in this case was 5-18-09.

(14) This is claimant's second instance of noncompliance.

(15) On 5-18-09, claimant filed for 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 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 “noncompliance”. BEM 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. BEM 233A.

A claim of good cause must be verified and documented. BEM 233A states that:

Good cause includes the following...

Illness or Injury

The client has a debilitating illness or injury, or an immediate family member’s illness or injury requires in-home care by 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 was claimant's second incident of noncompliance, and was thus ineligible for second chance procedures. BEM 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. BEM 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. 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.

The Department allegedly sanctioned the claimant because the claimant failed to provide a doctor's note for verification that covered the date in question, 4-20-09.

Department Exhibit 7, Claimant's Doctor Note, clearly says that claimant's son was under a doctor's care on 4-20-09, and that the claimant and her son could return to work on 4-21-09. The date claimant did not participate was 4-20-09. The Department argued that this note was not sufficient for two reasons: 1) The note was turned in after the triage, and 2) the note was not signed.

With regard to the Department's first contention, the undersigned notes that nowhere in BEM 233A does it say that a claimant must turn in verification of good cause before or during the triage. BEM 233A specifically says that a client must establish good cause within the negative action period—i.e. before the negative action date. Claimant turned the note in on 5-7-09. The negative action date, according to the Department's hearing summary, was 5-18-09.

Therefore, claimant had until 5-18-09 to turn in her verification of good cause. Claimant did so. This negative action date is correct—in order to restore benefits pending a hearing decision, a claimant must request the hearing before the negative action date. Claimant's benefits were restored pending hearing, and she requested her hearing on 5-18-09. Therefore, the 5-18-09 negative action date must be correct. Thus, the Department was in error when it stated that this note was unacceptable.

Even if the claimant had turned in her verification late, the undersigned notes that the Department made a good cause determination on 5-7-09. Department Exhibit 6—Good Cause Determination. This was the same date that claimant turned in her doctor's note. Thus, the Department's protests that they could not have known about the note before making their decision rings hollow. Claimant turned in the note on the same day they made their decision. Under no reasonable reading of law and policy can the Department say it was turned in late. The Department's contention that good cause must be turned in at the triage is not supported by policy, and the Administrative Law Judge would caution the Department to be more familiar with policy before testifying under oath that the policy says things it does not say.

With regard to the Department's second contention that the note was unacceptable because it was not signed, the Administrative Law Judge notes that nowhere in BEM 233A does it require a signed doctor's note—only that verification must be provided. The note in question was handwritten and then stamped with the pediatrician's (presumed) office stamp. The Department states that this note is unacceptable, because a doctor did not sign it, thus opening up the note to accusations of forgery. The undersigned questions this rationale—logically speaking, a handwritten note would be far easier to forge than a specific stamp with the business's name and address. Regardless, nothing in BEM 233A provides specific guidelines as to the guidelines

verification must follow. Therefore the undersigned must conclude only that the verification be of such a type that a reasonable person would conclude it sufficient.

A doctor's note, hand written on the doctor's office stationery, and stamped with an office stamp is obviously such reasonable verification. A claimant presenting such a piece of evidence was more likely than not where she said she was on the day in question. The Department had to reach quite far in order to provide a justification as to why the note was unacceptable, and imply that the claimant had stolen the pad, and the stamp, and written it out herself. No evidence was provided to back this theory up—only veiled accusations that bordered on the slanderous, given the serious nature of the offense the Department implied the claimant guilty of.

However, it is not up to the Department to invent potential explanations as to why a note is insufficient—only to wait and accept any reasonable verification. The Department is not in the business of looking for reasons to find a claimant noncompliant—it is in the business of acting impartially in an effort to ferret out the truth of a situation.

The fact that the Department felt a need to present wild conspiracy theories of stolen stamps and pads and clever forgeries at the hearing leads to an assumption that, most charitably, the Department was attempting to justify its erroneous actions after the fact. The Administrative Law Judge will remind the Department that these hearings are non-adversarial. There are no "sides". The only concern is not whether a caseworker is proved right or wrong, or the Department wins its case—the concern is whether the institutional actions were correct. If the actions are shown to be clearly erroneous, as is the case here, the Department should refrain from digging in its heels and reaching for any possible justification in order to defend itself, no matter how outlandish. It should instead make a move to correct the action and move on.

In the current case, the Department made an incorrect decision. Claimant should have been awarded good cause. As no good cause was awarded, the actions of the Department were incorrect, and must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had good cause for her failure to attend the JET program during the month of April, 2009.

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

The Department is ORDERED to reschedule the claimant for all appropriate JET classes, and/or meetings and remove the negative action from the claimant's case.

/s/

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

Date Signed: September 1, 2009

Date Mailed: September 2, 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:

