

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: 2009-24467
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 14, 2009
Berrien 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 14, 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 Berrien County.
- (2) Claimant's husband, [REDACTED], was a mandatory JET participant.
- (3) The case at hand concerns [REDACTED] actions; therefore, [REDACTED], for the sake of brevity, shall be referred to henceforth as the claimant.

- (4) Claimant was denied a medical deferral from JET by the Medical Review Team (MRT).
- (5) Claimant was assigned to JET on May 11, 2009, but did not complete the appointment.
- (6) Claimant was subsequently assigned to triage.
- (7) On May 27, 2009, claimant signed a DHS-754, agreeing to get back into compliance with the JET program.
- (8) Claimant was reassigned to JET on June 1, 2009.
- (9) Claimant did not get back into compliance.
- (10) Claimant was sent to the hospital on [REDACTED], for asthma related complications.
- (11) A medical needs form that was completed on June 16, 2009 revealed that claimant was unable to attend any work related activities.
- (12) Claimant's case was subsequently closed for failing to adhere to the provisions of the DHS-754.
- (13) On May 26, 2009, claimant requested a hearing, arguing that he should have been granted a medical deferral from MRT, and alternatively that he had good cause for the non-participation in question.
- (14) On July 16, 2009, two days after the close of the hearing record, claimant sent a packet to the Administrative Law Judge which contained various pieces of potentially relevant evidence.
- (15) This evidence had not been motioned for admittance to the record.
- (16) It is unknown whether this evidence packet was provided to 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 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 pg. 1.

However, non-participation can be overcome if the client has “good cause”. Good cause is a valid reason for failing to participate 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 via the DHS-754 process. BEM 233A. In the current case, claimant had already signed and agreed to participate using this process, when he failed to attend JET. The issue therefore, is not whether claimant was non-participatory without good cause before the signing of the DHS-754—claimant agreed that he was noncompliant when he signed the DHS-754—but rather, whether claimant was non-participatory without good cause when he failed to attend JET during this compliance test procedure.

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.

While a triage is necessary during the first case of non-participation and referral, the policy is silent as to the necessity of a triage for a failed compliance test. However, there is nothing in the policy that prohibits the Administrative Law Judge reviewing the case from determining if good cause applies at the Administrative Hearing level.

However, before good cause can be examined, two preliminary issues must be examined that were raised both during, and after, the hearing.

The claimant apparently requested the hearing with the intent of requesting a ruling regarding the appropriateness of claimant's denial of a medical JET deferral by the MRT. Unfortunately, the undersigned has no jurisdiction regarding the denial of the deferral. BAM 600 states:

“SOAHR may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.”

A denial of a deferral is not a negative action; it is simply a departmental determination as to the appropriateness of claimant for certain program classifications. Claimant’s benefits were not affected until his failure to attend the JET appointment. Therefore, while an Administrative Law Judge has the power to decide whether or not claimant’s medical problems would constitute good cause for non-participation in the JET program and other work-related activities, an Administrative Law Judge cannot rule as to whether the claimant should be classified in a certain manner.

However, claimant was subsequently terminated from the JET program for a failure to participate with work related activities; this is a negative action, and the Administrative Law Judge may review the appropriateness of this negative action with regard to the policies found in BEM 233A.

A second issue arose after the hearing. On July 16, 2009, claimant faxed to the Administrative Law Judge, on his own time and unasked for, an evidentiary packet he felt was beneficial to his case, containing information that had been in the possession of the JET agency, as well as various medical documents purportedly detailing the seriousness of his medical condition. However, claimant never made a motion to admit this packet into evidence, and it is unknown whether claimant gave a copy of this evidentiary packet to the Department representative. Furthermore, because this evidence was submitted after the close of the hearing

record, the Department was not given the ability to object or comment on its inclusion in the official hearing record.

While the Administrative Law Judge is only bound to follow the official rules of evidence as far as practicable (Michigan Administrative Procedures Act, MCL 24.275), the undersigned refuses to stretch the evidentiary rules so as to allow evidence that one party has neither seen, nor has had a chance to review, and was submitted after the close of the hearing record. While the evidence submitted may indeed be probative, the undersigned, cannot, in the interests of due process and fairness, consider it. Thus, the evidence submitted by the claimant after the close of the hearing record will not be allowed in to the official record.

However, the undersigned does not feel that claimant will be harmed by this decision. After a full review of the allowed evidence, the undersigned is of the opinion that claimant's benefits were terminated inappropriately.

Department Exhibit 5, Medical Needs Form, shows that on [REDACTED], claimant was taken to the hospital for complications arising from his severe asthma. Claimant's doctor stated on this form that claimant was currently unable to work.

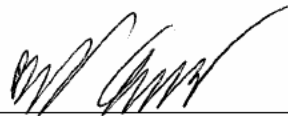
Claimant's termination from the FIP program arose because claimant failed to attend JET after signing a DHS-754, which rescheduled him for the program beginning June 1, 2009. Claimant's medical condition, as attested to on this Medical Needs Form, was directly responsible for claimant's failure to participate as agreed. BEM 233A specifically states that verification of an acceptable reason for a failure to participate constitutes good cause. This documentation shows that claimant had good cause, and was unable to participate as was required. Therefore, the Department was in error when it closed claimant's FIP case.

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 his failure to attend the JET program during the month of June, 2009.

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

The Department is ORDERED to open claimant's case retroactively to the date of negative action, and supplement any missed benefits as a result of case closure. The Department is FURTHER ORDERED to reschedule the claimant for all appropriate JET classes and/or meetings.



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

Date Signed: 12/23/09

Date Mailed: 01/06/10

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

2009-24467/RJC

cc:

