

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: 2009-30176
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 13, 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 August 13, 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 Saginaw County.
- (2) Claimant was first referred to JET on February 23, 2009.
- (3) Claimant originally asked for a disability related deferral from JET; MRT determined that claimant was ineligible for this deferral.

- (4) Over the next several months, claimant was given several JET appointment notices.
- (5) Claimant had a legitimate medical excuse for a failure to attend these appointments.
- (6) These medical excuses included notes from her doctors stating that she would be unable to work for the next several months.
- (7) On May 19, 2009, claimant received a DHS-4785, JET Appointment Notice, and was referred to an orientation on May 26, 2009 or June 1, 2009.
- (8) Claimant did not attend the May 26, 2009 appointment and provided a doctor's note saying that claimant needed to be off of work for the next three months, signed by claimant's cardiologist.
- (9) Claimant's caseworker contacted claimant and told her that this note was no longer acceptable, and that claimant's doctors could no longer defer the claimant.
- (10) The caseworker's reasoning for not accepting a doctor's note was that claimant's request to be placed in medical deferral status was denied by MRT.
- (11) Claimant was told to attend the June 1, 2009 orientation or she would be sanctioned.
- (12) Claimant did not attend the June 1, 2009 orientation.
- (13) On June 11, 2009, claimant's caseworker called the claimant as part of a "phone triage".
- (14) No evidence was presented that claimant's caseworker sent a DHS-2444, Notice of Noncompliance, as required by policy.
- (15) Claimant reiterated that her doctor had taken her off of work for three months.
- (16) Claimant also stated that she was having heart surgery the next day.

- (17) Claimant's caseworker contacted the doctor performing the surgery.
- (18) The doctor wrote a letter stating that the surgery was a minor procedure and that he would not excuse claimant from work for the procedure or recovery.
- (19) This doctor was not the doctor that wrote the original excuse note, excusing claimant for 3 months.
- (20) Claimant's caseworker allegedly did not grant good cause, and documented the conversation with claimant and claimant's doctor on a phone documentation record.
- (21) No evidence was presented that claimant's caseworker filed a good cause determination on a DHS-71, as required by policy.
- (22) Claimant was allegedly notified of the Department action on June 5, 2009, but no negative action notice has been submitted as evidence.
- (23) The negative action date was listed as being on July 16, 2009.
- (24) Claimant filed a hearing request on June 26, 2009, which was before the negative action date; however, claimant's benefits were not restored pending the outcome of the hearing.
- (25) Claimant argued in her hearing request that she had good cause for her failure to participate, because she had a doctor's note excusing her from JET attendance.
- (26) This is claimant's first incident of noncompliance.

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 Saginaw Department of Human Services switched over to the Bridges Manual on June 17, 2009. All dates of import in this matter occurred before this date. Therefore, the case shall be decided according to regulations found in the Program Reference Manual, and not the Bridges Reference Manual.

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, a failure to participate 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...

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. 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. In order to schedule a triage, a DHS-2444, Notice of Noncompliance, must be sent to the claimant, in order to inform the claimant of the dates they were non-participatory, and in order to provide claimant with notice to document any good cause defense they may wish to present. 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.

In the current case, the Department's procedures towards overcoming claimant's alleged noncompliance were inadequate. While there undersigned is of the opinion that the claimant had acceptably documented her evidence of good cause by presenting the Department with a doctor's note excusing her from work for three months, this fact is, ultimately, irrelevant.

The Administrative Law Judge is bound to decide any case on the narrowest grounds possible, starting with whether or not the Department's procedures in the current case were

correct. If the Administrative Law Judge decides that the Department did not conduct its procedures properly, he can only reverse on those grounds and order the Department to correct its mistakes. If the Department's procedures were flawed, any determination that was a result of those procedures is also flawed, and, for all intents and purposes, never happened. The Administrative Law Judge must first give the Department a chance to reach their decision using the correct guidelines.

In the current case, the Department's procedures were flawed, and therefore, denied claimant the due process she was entitled to before being cut off from benefits.

PEM 233A requires the Department to make a good cause determination. The Department has presented no evidence that a good cause determination was ever made. Good Cause is recorded on a DHS-71, Good Cause Determination form. There was no DHS-71 in the file, and the Department did not produce one at hearing. Therefore, the undersigned must conclude that the Department has not met its burden of proof in showing that it followed its own regulations in sanctioning the claimant.

Additionally, the undersigned would note that this is not a problem simply because the Department recorded its determination on the wrong form—this is not a cosmetic error. The undersigned notes that the Department did present a documentation record of the phone call and subsequent call to claimant's operating doctor. However, the undersigned also points out that nowhere in this documentation are the words "good cause" used, and the documentation only states that the caseworker told the claimant that her doctor's note was not good enough, that the claimant was having surgery the next day, and a contact with claimant's surgeon revealed that the surgery would not be of a type that would require claimant to be removed from work.

This is a statement of facts. This is not a determination. Even if the undersigned were inclined to ignore the fact that no official DHS-71 was filed, the fact remains that this phone

record contains no actual determination, just a listing of events in chronological order. While the caseworker may have assumed that her intention was obvious from the context of the documentation, the undersigned does not believe this is so. Nowhere in this documentation does it say that a determination had been made, and no evidence, beyond the testimony of the caseworker, shows that an official good cause determination was made. Finally the Administrative Law Judge notes that PEM 233A specifically requires a DHS-71 form to be filled out, thus potentially rendering the phone record useless. Regardless, there was no determination of good cause, and therefore, the Department was in error when they terminated the claimant's benefits.

However, the undersigned suspects that the reason no good cause determination was ever filled out was because the Department never actually scheduled a triage. In order to start processing a FIP closure for noncompliance, the Department is required to send a DHS-2444, Notice of Noncompliance, to the claimant. This notice informs the claimant in exactly what way the claimant was non-participatory, what the sanction will be if claimant is found noncompliant, when and where the triage will be held, and explains the claimant's rights and responsibilities with regard to the triage. PEM 233A explicitly requires that this notice be sent out; however, there is no evidence in the file that this notice was ever sent.

This was not harmless error. Before any cut-off can be processed, proper notice must be sent. This is to allow a claimant a chance to prepare a defense, secure representation, gather her evidence, and prepare to present her side of the story to her caseworker. Furthermore, according to PEM 233A, no triage can be held before this has been sent out.

As there is no evidence in the file that claimant was ever properly noticed as to her triage, the triage could not have been held. While there was a phone call made to the client, which the caseworker called a phone triage, the Administrative Law Judge holds that the phone call was

just that—a phone call. It could not have been a triage, as claimant was never noticed that she would have to prepare a triage. Even if the phone call could be considered a triage, the triage was faulty, because, as stated above, there is no evidence that a good cause determination was ever made.

This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures, and that the claimant's case should never have closed. The Department will be required to correct this procedural error, and reschedule the triage. The Department may decide at this new triage that the claimant had good cause at the time of the non-participation, and, should it do so, claimant should be sent back to JET.

This decision may not be satisfactory to the claimant, especially in light of the fact that the undersigned believes that the claimant had good cause. Unfortunately, the undersigned cannot overrule a good cause determination if no good cause determination was made. The Department never made this determination, and must be allowed to do so.

That being said, the undersigned will note that he does not expect that this case return to the Administrative Hearing level, as the regulations in PEM 233A require a finding of good cause.

Claimant's caseworker testified at the hearing that claimant's evidence of good cause, a doctor's note excusing her from work-related activities for three months, was unacceptable because MRT denied claimant's deferral. This is incorrect. No part of PEM 233A allows for a Department of Human Services' caseworker to substitute their judgment for that of a licensed doctor. Such a regulation would be unworkable and would introduce rampant abuse into the system. Furthermore, if claimant did go to JET, in violation of her doctor's orders, and subsequently incurred injury of some sort, the Department may find themselves legally liable for

forcing the claimant to ignore the health restrictions placed upon the claimant by a legitimate medical source.

MRT's denial is relevant only to the extent that it stated claimant could attend JET sometime in the future, with restrictions. This does not rule out the possibility that claimant's disability may remove her from work for periods of time. Under the caseworker's reasoning, a claimant with multiple sclerosis who was rightly denied a deferral by JET because their flare-ups were only intermittent, could never use an MS flare-up as a reason for missing class. This is clearly erroneous. MRT's decision has nothing to do with a subsequent treating source's opinion that a claimant is unable to work for a defined period of time. If the caseworker attempts to use this as a rationale for ignoring a legitimate medical excuse, she will be in error and that decision will be summarily reversed.

The caseworker has no authority to override the medical opinion of a doctor. The caseworker is not a doctor, and lacks the medical knowledge that comes with a doctor's training. PEM 233A states that documentary evidence of an illness is sufficient for a finding of good cause for non-participation. The Department would do well to remember this when they hold the new triage.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department was in error when they failed to provide notice to the claimant of the triage and failed to make a good cause determination before initiating cut-off procedures.

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

The Department is ORDERED to reinstate claimant's FIP benefits retroactive to the date of negative action and reschedule the claimant for a triage.



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

Date Signed: 10/29/09

Date Mailed: 10/30/09

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:

