

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: 2009-31957
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 1, 2009
Calhoun 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 September 1, 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 a FIP recipient in Calhoun County.
- (2) Claimant was a mandatory JET participant.
- (3) On July 7, 2009, claimant was referred to triage for a failure to meet participation requirements.

- (4) Claimant's daughter had been in the hospital and as such, claimant was unable to turn in required job logs in a timely manner.
- (5) On July 9, 2009, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage date of July 15, 2009.
- (6) Claimant attended the triage.
- (7) After the triage started late, claimant attempted to submit paperwork that she contended showed good cause for the non-participation at hand.
- (8) During the triage, the Department felt that claimant's triage had gone on too long and ended the triage.
- (9) The Department refused to accept any of claimant's paperwork purporting to show good cause at that time.
- (10) The Department informed claimant that she could copy the paperwork herself and submit it to the Department; only then would it be reviewed.
- (11) The Department told claimant that the triage would be rescheduled, if she submitted her paperwork.
- (12) Claimant was unable to submit the paperwork; the triage was never rescheduled.
- (13) Claimant's case was placed into closure on August 4, 2009.
- (14) This is claimant's second incident of noncompliance.
- (15) Prior to the hearing, claimant started receiving UCB benefits.

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...” BEM 233A pg. 1.

However, noncompliance can be overcome if the client has “good cause”. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the noncompliant 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 without good cause 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 and holding 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 argues that claimant did not have good cause for her failure to attend work first. The undersigned would give this argument more credence if the Department had given the claimant a chance to actually submit evidence of good cause.

When claimant appeared for her triage on July 15, 2009, claimant attempted to submit evidence of good cause. The Department, without looking at or examining some of the evidence, and summarily dismissing other parts of the evidence, stated that they were too busy at the moment to give claimant's case actual consideration. Claimant's triage was cut short without claimant being given a chance to fully present her case. Claimant was told that she could take her documents, copy them at her own expense, and submit them to the Department at a later date.

If, and only if, the Department received these documents, would claimant's triage be re-scheduled.

BEM 233A requires a triage to be held. This includes giving the claimant a chance to actually present her version of events, and accepting any documents that have a bearing on good cause. The undersigned, after looking through some of the documents claimant wished to present, admits that much of it is repetitious and irrelevant. However, some, including medical records for a date in question for claimant's daughter, have a direct bearing on whether or not claimant has good cause.

The Department may indeed have been busy on the day in question. However, by failing to allow claimant to adequately present her evidence of good cause, refusing to take any of the documents, and forcing claimant to copy said documents at her own cost effectively denied claimant her triage. While the Department is not prohibited from rescheduling a triage due to time constraints, the Department certainly may not condition that triage on claimant's submission of relevant documents.

As claimant was effectively denied a triage, the undersigned holds that no triage was held. As such, any penalty or sanction applied to the case was in error.

The undersigned notes that claimant started receiving UCB benefits shortly after the date of negative action. While these benefits essentially moot the cash portion of the case, or the matter of whether the case should remain open, the fact remains that a penalty has still been applied to claimant's case. This is a non-trivial matter, and as such, claimant is entitled to a triage.

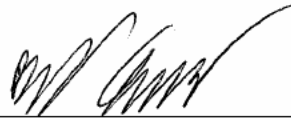
The triage must therefore be rescheduled, and the Department must review all evidence at this triage. Should the outcome remain unfavorable to the claimant, claimant will retain the right to request a hearing on the triage outcome.

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 it did not give claimant a full triage, or allow claimant to submit relevant documents.

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

The Department is ordered to reschedule the claimant's triage and make a good cause determination after reviewing all relevant evidence, as is consistent with BEM 233A.



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

Date Signed: 01/21/10

Date Mailed: 01/22/10

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.

2009-31957/RJC

RJC/dj

cc:

