

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: 2009-34132
Issue No: 1038; 6015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 8, 2009
Wayne 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 October 8, 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?

Was the claimant's CDC application properly denied for failure to return verifications?

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 Wayne County.
- (2) On March 10, 2009, claimant was sent a DHS-3503, Verification Checklist, requesting verifications in order to determine eligibility for the CDC program.

- (3) Sometime before this request was sent to claimant, claimant moved to a different address.
- (4) Claimant filed this change of address with the Department automated address change system.
- (5) This change of address was never forwarded to claimant's caseworker, who continued to send all correspondence to claimant's former address.
- (6) Claimant never received this correspondence.
- (7) On April 17, 2009, claimant was sent a DHS-1150, Application Eligibility Notice deny claimant's CDC application for a failure to provide requested verifications.
- (8) On August 25, 2009, after finding out that her application for CDC had been denied, claimant requested a hearing, alleging that she had never received a request for verifications.
- (9) The Department did not contest the validity of this hearing request, which was over the normal 90 day standard set by BAM 600.
- (10) On June 19, 2009 DHS was notified that claimant was not meeting participation requirements with the JET program.
- (11) Claimant had been sick for several days, with excuse, before the incident of non-participation.
- (12) Claimant had informed JET that she currently had a high risk pregnancy, and was in the midst of seeking a medical needs form from her doctor, to excuse her from participation.
- (13) On June 22, 2009, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for July 1, 2009 at 9:30am.

- (14) This notice was sent to claimant's former address, as was all correspondence.
- (15) Claimant did not attend triage, because she had never received notice of the triage.
- (16) Claimant's FIP case was closed in a response to claimant's missed triage appointment.
- (17) The filed DHS-71, Good Cause Determination, reads in pertinent part, "meeting schedule customer fail to attend. Case will remain in closure."
- (18) During the triage, the Department did not consider claimant's current medical problems, or use that information to make a good cause determination; no good cause determination was ever made, other than stating that claimant did not attend triage.
- (19) Claimant's case was sanctioned and closed.
- (20) This is claimant's first incident of noncompliance; however, because claimant did not attend the triage, no DHS-754 was offered.
- (21) On August 25, 2009, claimant filed a request for hearing, alleging that was unaware exactly why her FIP case had closed.

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).

The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained 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 p. 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. The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused. BEM 233A.

Furthermore, JET participants cannot be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. If

a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. 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 must be considered, even if the client does not attend.** 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's procedures towards overcoming claimant's alleged noncompliance were inadequate. While there are legitimate questions as to whether the claimant could have attended the triage, or whether the claimant even had good cause, or whether the claimant was noncompliant, as claimant argued, these questions are, ultimately, irrelevant. The only relevant fact is that BEM 233A requires the Department to make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. Department Exhibit 1, the Hearing Summary, states that the case went into negative action when the claimant did not "show up for her appointment." No mention of an independent good cause determination is made. Department Exhibit 8, the DHS-71 states that "meeting schedule customer fail to attend. Case will remain in closure", and does not state that an independent good cause determination was made. The Department testified that no good cause was determined because claimant did not show up for triage. This is far from harmless error; Department Exhibit 6, the MIS case notes, show that claimant had been ill in the days leading up to her non-participation, and was in the process of meeting with her doctor to fill out a medical needs form due to her high risk pregnancy. At a triage that the claimant does not

attend, the Department must use all available information to render a good cause determination; there is no evidence that the Department used this information.

Therefore, as no independent evidence has been offered to show that a good cause determination was made beyond noting that claimant did not show up for the triage, and that all evidence in the file shows that the reason for the noncompliance assessment was because claimant did not show up for the triage, the undersigned must hold that the Department did not make an individual assessment. This is plain error.

DHS is required to hold the triage without the client, and discuss and consider all factors that are known about the client that may have contributed to good cause. A good cause determination must then be made, using these known factors. BEM 233A, p. 9. The available evidence shows that this determination was not made, and implies that the triage was not held, thus placing the Department in error.

On a related note, it should be stated that even if the Department's triage procedures were proper, the undersigned would still hold that the claimant received improper notice of the triage. Claimant testified credibly that she did not receive notice of the triage. Claimant credibly testified that she had changed addresses prior to this alleged non-participation. She also testified that she had changed her address with the Department's automated address change system. The Department stated that they had never received notice of this address change. The undersigned finds claimant's testimony credible. The Department has often had trouble in the past processing address changes, and given statements in the case packet, claimant's failure to answer all notifications with regard to her case, and her hearing request stating confusion as to why her case had been placed into negative action, the undersigned believes that claimant truly was not aware of the actions proceeding against her.

Therefore, the undersigned would hold that it was more likely than not that the claimant did not receive notice of the triage, and therefore, the Department must reschedule it.

With regard to the claimant's CDC application denial, the undersigned, based on the claimant's credible testimony of address change, would note that the claimant never got the verifications as requested. While BAM 130 holds that an application may be denied if the Department is unable to determine eligibility due to the claimant's failure to return verifications, the claimant must first receive notice that the verifications were sent. Claimant testified that she had changed her address before the DHS-3503 was sent to her house. The DHS-3503 was sent to her previous address. Therefore, the claimant did not receive the request for verifications. Furthermore, while under normal circumstances the claimant must appeal a denial within 90 days; it appears the denial notice was also sent to the claimant's previous address. Thus, claimant did not receive a denial notice, and the undersigned holds that under the circumstances, the appeal was timely. The Department erred when it did not change claimant's known address in its system.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was in error when they failed to make a good cause determination. Furthermore, the Department was in error when claimant's CDC application was denied for failing to return requested verifications.

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

The Department is **ORDERED** to reschedule a triage for the claimant, and reopen claimant's case retroactive to the date of case closure. The Department is further **ORDERED** to institute any appropriate triage and post-triage procedures, including a good cause determination

and a consideration of whether claimant was noncompliant in the first place, as is consistent with the BRIDGES Eligibility and BRIDGES Administrative Manuals for a first or second incident of non-compliance.

Finally, the Department is ORDERED to reprocess claimant's CDC application retroactive to the date of application. The Department is to request any proper verifications needed to determine eligibility for this program before rendering its decision.



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

Date Signed: 11/23/09

Date Mailed: 12/04/09

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:

