

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: 2009-10725
Issue No: 1038; 6019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 19, 2009
Ottawa 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 February 19, 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 Ottawa County beginning 10-01-07.
- (2) Claimant signed a DHS-1538, Work and/or Self-Sufficiency Rules for Cash Recipients, on 9-19-07.

(3) On 7-01-08, claimant's case was changed to the EFIP program based upon increased employment income.

(4) On Friday, November 21st, 2008, claimant reapplied for FIP following a decrease in employment. At this time, claimant's DHS case manager advised the claimant that she would have to attend JET as a requirement.

(5) Claimant advised the case manager that she would be in Florida in December, and was unsure upon what date she would be returning.

(6) Claimant was scheduled to leave for Florida on 12-3-08. It is unknown whether claimant informed the DHS case manager of the exact date.

(7) The DHS case manager then advised the claimant that she withdraw the FIP application until her return to avoid any problems, including a possible sanction.

(8) Claimant subsequently advised the case manager that she would need time to discuss this with her mother.

(9) On Tuesday, November 25th, 2008, two business days later, a DHS-4785, entitled Work First/Jobs, Education and Training Appointment Notice was mailed to the client, scheduling an appointment for 12-08-08.

(10) On 12-3-08 claimant left for Florida to take care of her father, who was suffering from stage 4 prostate cancer and dying. Claimant was unsure at this time how long she would be there.

(11) On 12-8-08, JET case manager [REDACTED] notified DHS caseworker [REDACTED] [REDACTED] that claimant had missed her JET appointment. This notice was also mailed to claimant.

(12) Sometime between 12-08-08 and 12-11-08, claimant's mother received the notice and contacted [REDACTED] for Michigan Works and JET.

He advised claimant's mother that the missed appointment wasn't a problem and that the claimant could be accommodated.

(13) At this time, claimant's mother did not know when claimant would be returning from Florida. Unfortunately, she did not inform [REDACTED] of this fact.

(14) Nor did [REDACTED] inform DHS that an accommodation was being made.

(15) [REDACTED] called claimant's mother back and left a message stating that claimant was being scheduled for a class on 12-15-08.

(16) Sometime after this, claimant's mother again called Michigan Works and spoke with [REDACTED] was informed that claimant had solidified a return date, and would return to Michigan on 12-20-08. It is unknown if [REDACTED] contacted either [REDACTED] or DHS.

(17) Meanwhile, DHS was processing the earlier notification from JET that claimant had missed her 12-08-08 appointment. On Thursday, December 11th, 2008, DHS mailed two notices of case action, canceling claimant's FIP grant for non-compliance and claimant's CDC grant for non-employment. DHS also sent a DHS-2444, Notice of Non-Compliance to the claimant, which scheduled a triage for Monday, December 15th, 2008, two business days later.

(18) This notice stated that claimant had until 12-23-08 to demonstrate good cause for non-compliance.

(19) This triage was scheduled during the time of the new JET appointment, which had been scheduled by [REDACTED], as noted above.

(20) There was no communication between JET and DHS as to the overlap of these times, the rescheduled appointments, or the fact that the claimant was still in Florida and therefore, unlikely to receive her mail or attend any of these appointments.

(21) On 12-15-08, claimant was still in Florida. She did not attend the JET appointment or the triage appointment.

(22) On 12-15-08, the DHS case manager found No Good Cause for claimant's non-compliance.

(23) On Saturday, December 20th, 2008, claimant returned to Michigan.

(24) On Monday, December 22nd, 2008, claimant contacted DHS by submitting a hearing request to protest their decision. In the hearing request, claimant explained the timeline as she understood it, that she had been in Florida taking care of her sick father, and that she had informed DHS that she would be absent from the state back when she first applied for FIP benefits.

(25) It is unknown if DHS reversed their finding of No Good Cause at this time. However, on 1-09-09, according to the Department's Hearing Summary, claimant completed an FIP review and signed a new DHS-1538. Apparently, the compliance issues were discussed and claimant was given a new JET appointment date of 1-20-09.

(26) According to the hearing summary, if claimant attended the 1-20-09 JET appointment, DHS would withdraw the proposed negative action and 3 month sanction. However, DHS has provided no evidence that a DHS-754, First Noncompliance Letter, was signed or given to claimant.

(27) DHS has presented no evidence that claimant has had other incidences of non-compliance with work related activities.

(28) Claimant did not attend the 1-20-09 JET appointment.

(29) On [REDACTED], claimant's father passed away. The cause of death listed on the certificate of death was listed as "prostatic cancer".

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 Child Development and Care program is established by Titles IV-A, IV-E and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 “non-compliance”. PEM 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...” PEM 233A pg. 1.

However, non-compliance 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. 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 without good cause is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused, as will be noted later in this decision. PEM 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. *DHS offices are supposed to locally coordinate a process to notify the MWA case manager of triage meetings, including scheduling guidelines.* 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.

The timeline in this case is admittedly convoluted. Both the Department and the Claimant presented very thorough summaries of their cases and the timelines involved; unfortunately, these timelines did not always match up. However, all evidence presented agrees on several things: 1) the claimant told her caseworker at the very beginning of this saga that she would be in Florida in December; 2) JET agreed to accommodate the claimant with regard to her schedule, and; 3) JET never informed DHS of its intent to accommodate the claimant, nor of claimant's subsequent communications. Furthermore, Claimant's Exhibit 1 proves conclusively that claimant's father had a debilitating illness as contemplated under the Good Cause exceptions of PEM 233A.

From these known facts, we can come to several deductions. First, DHS was on notice of claimant's scheduling difficulties in the month of December. Claimant fulfilled her duty of informing DHS of her inability to comply with work related activities during this time period. Second, even if she hadn't informed DHS at the beginning, JET agreed to accommodate the claimant, even if the second appointment was insufficient to meet claimant's needs. JET's inexplicable failure to notify DHS of this accommodation was entirely their fault; no blame can be assigned to the claimant. Third, claimant's father's illness meets the intent of PEM 233A, meaning that claimant had a legitimate reason to miss the activities scheduled by DHS and JET.

Admittedly, there is a question of whether claimant verified her father's illness; however, given that there is no evidence in the record that DHS ever told claimant what verifications would be needed to prove this good cause upon claimant submitting a hearing request (or even ask claimant for verifications at all), it appears from the evidence of record that DHS did not

consider claimant's excuse, which they were required to do. That claimant submitted proof immediately when asked goes far towards establishing good cause.

Therefore, for the reasons stated above, the undersigned finds that claimant had good cause for her noncompliance, and any further sanction action was inappropriate given the circumstances; a new JET appointment should have been scheduled after claimant returned from Florida.

However, even if there was not good cause, DHS's procedures towards overcoming claimant's noncompliance were inadequate. PEM 233A requires that the triage be scheduled "with the client" before termination from a JET program. This implies that a client be given actual, sufficient, notice of the triage. Claimant's mother had communicated with JET that claimant was still in Florida, and DHS had been told in November that claimant would be in Florida. As DHS offices are supposed to locally coordinate a process to notify the MWA case manager of triage meetings, including scheduling guidelines, the undersigned finds that DHS knew, or should have known, that claimant would probably be in Florida at the time of the triage. Therefore, DHS knew, or should have known at the time it sent the notice that the claimant would probably not be notified of the triage meeting until after it had taken place, and would be very unlikely to be able to reschedule or take part in a phone triage. At the very least (that is, if claimant's mother notified JET of the 12-20-08 return date after December 15th) it should have known post-triage that the claimant would not have been able to attend the triage meeting. The undersigned believes therefore, that these facts taken together constitute insufficient notice.

Furthermore, even if the claimant wasn't in Florida, JET's scheduled class for the claimant on 12-15-08 would have prevented the claimant from attending the triage, by phone or otherwise. By sending out the notice of triage two business days before the actual triage, DHS created a reasonable chance that claimant would have received the notice too late to call for a

phone triage, given that mail usually takes at least 1 business day to be delivered. Claimant would have been unable to notify DHS that she was unable to attend in person. That JET didn't inform DHS of what it knew or scheduled is irrelevant: as stated above, DHS offices are supposed to locally coordinate a process to notify the MWA case manager of triage meetings, including scheduling guidelines. PEM 233A. It was incumbent upon DHS to be coordinating the meeting schedules; this clearly was not done. Therefore, this ALJ finds that the triage scheduling was inadequate as the claimant could never have attended the triage regardless of what state she was in. Thus, even if we don't consider good cause, a new triage should have been scheduled.

Furthermore, if we consider, for the purposes of argument, that the claimant did not have good cause, and DHS provided adequate notices of the triage, post-triage procedures were incorrect as well. PEM 233A states that:

If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is No Good Cause, within the negative action period, do the following...

2. Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.

3. Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period....

5. If the client accepts the offer to comply and agrees with the department's decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754...

9. When the client verifies compliance within the negative action period and is meeting the assigned activity that corrects the noncompliance, delete the second negative action. If the case closed in error, reinstate the case with no loss of benefits....

11. If the client does not agree with the department's decision of noncompliance without good cause, use the second check box on the DHS-754 that advises the client not to sign the form. Assist the client with filing a hearing request and advise them that if they lose the hearing, they will receive a new notice of noncompliance and a new meeting date and they have the right to agree to the activities outlined on the DHS-754 and avoid the financial penalty at that time unless another group member uses the family's first excuse before the hearing issue is settled...This policy only applies for the first case of noncompliance on or after April 1, 2007....

While it is unclear what contact was made with the Department by the claimant upon her return from Florida, it is clear from the evidence in the file that DHS knew as of 12-22-08 that the triage had been scheduled and took place without the claimant's knowledge. That alone should have resulted in a new triage; however, even if a new triage were not appropriate, by the Department's own admission, on 1-09-09, claimant was given an FIP review where the compliance issues were discussed, and the "second chance" contemplated by PEM 233A and the DHS-754 were discussed and implemented. However, DHS has neither submitted a DHS-754, nor even implied that one was sought. Therefore, due to the nature of this review, the undersigned must conclude that this review meeting functioned, in effect, as a triage, and the Department's failure to provide a DHS-754, which is absolutely required by the regulations, is reversible error.

Admittedly, there is a question, brought up in the claimant's request for hearing, that raises the question of whether this is the claimant's first noncompliance issue. However, as the Department has not provided any evidence that this is anything but claimant's first major problem, the undersigned must conclude that the DHS-754 procedure was the correct one to follow if good cause was not granted.

Thus, the fact that claimant did not attend the 1-20-09 JET appointment, for whatever reason, is an entirely separate issue. A DHS-754 was not given, therefore making the 1-20-08 appointment more akin to a normal missed appointment instead of a "second chance"

appointment. A normal missed appointment outside of the timeframe discussed above is of little relevance to this hearing. The issue at hand was the missed JET appointments in the month of December, 2008; any later missed appointments are beyond the purview of this hearing. Likewise, should the Department wish to pursue sanctions for this missed appointment (after making a good cause determination at an appropriate triage meeting and offering a DHS-754 to the claimant), this Administrative Law Judge would have little to say in the matter.

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 December, 2008. Furthermore, subsequent triage notice was insufficient, as were post-triage procedures.

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. If such classes/meetings have already been scheduled and missed, the Department is further ordered to institute any appropriate triage procedures as are consistent with the Program Eligibility and Program Administrative Manuals for a first incident of non-compliance, should Good Cause not be found

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

Date Signed: February 2, 2009

Date Mailed: March 3, 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:

