

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: 2009-11297

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 25, 2009

Iosco 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 25, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and a 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) [REDACTED] has been an FIP recipient in Iosco County for at least five of the last eight years.

(2) [REDACTED] significant other, [REDACTED], is a Work Eligible Individual in

[REDACTED] benefit group, and thus, subject to the same requirements.

(3) A hearing was held on 2-25-09 regarding the actions of [REDACTED]. [REDACTED] did not appear at this hearing, because, while the case does involve his member group, his actions are not at issue. [REDACTED] did appear at this hearing, and testified as the claimant.

(4) [REDACTED] filed a hearing request on 1-2-09 on behalf of [REDACTED], regarding her actions and the Department's perception of her actions. Thus, for the purposes of simplicity, this Hearing Decision shall refer to [REDACTED] as "claimant".

(5) Claimant was participating in the JET and Work Experience Programs (WEP), for the purposes of meeting the requirements for work and self-sufficiency related activities as contemplated by the Program Eligibility Manual.

(6) Claimant's family does not own a car.

(7) Claimant's driver's license was suspended several years ago and will not be reinstated until claimant pays an additional [REDACTED] dollars in driver's responsibility fees.

(8) Claimant is therefore dependent on [REDACTED], a local bus/shuttle company serving the rural Iosco County area, in order to get to work sites and JET meetings.

(9) On Monday, December 1st, claimant missed her WEP appointment because the transit bus was not running due to weather-related concerns.

(10) Claimant did not have enough cell minutes on her phone to call about the missed appointment on 12-1-08, and therefore, did not contact anybody until 12-02-08.

(11) Department was fully aware of claimant's phone situation, and had been for some time, according to the Department's own testimony and exhibits, and knew that the transit was not running that day.

(12) The Department marked in their MIS case notes for that day that claimant had missed her appointments because of transit issues and hadn't called because claimant does not have a phone.

(13) On Tuesday, December 2nd, 2008, claimant missed her WEP appointment, because the transit bus requires 24 hour notice for pickup, but was closed the previous day.

(14) Claimant notified both the JET and the WEP programs on 12-2-08 of the reason for her absence for both 12-1 and the 12-2 program dates.

(15) The JET program caseworker assigned a 1st miss to the client for failure to call, despite knowing of the transit authority shut down the previous day and claimant's phone troubles.

(16) On 12-9-08, claimant missed JET and WEP appointments again, because the transit authority was closed. Claimant left a message for her caseworkers on this day.

(17) On 12-15-08, weather problems once again forced a transit shutdown, and claimant missed her JET and WEP appointments.

(18) On 12-15-08, claimant's WEP manager informed the JET program that claimant was not to return to her work site, due to claimant's unreliable transit issues.

(19) On 12-16-08, JET assigned claimant a 2nd miss for the 12-15-08 incident and referred claimant to triage.

(20) On 12-17-08, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage on 12-29-08.

(21) On 12-29-08, after the triage, DHS issued a DHS-71, Good Cause Determination which found No Good Cause, because claimant had not shown any "positive moves" towards overcoming her transportation difficulties.

(22) On 1-2-09, claimant filed her request for hearing indicating that she thought good cause was warranted because of the transportation issues. This hearing request was received by DHS on 1-16-09.

(23) Claimant was not eligible for the DHS-754 “second chance” procedure because [REDACTED] had been found in violation of employment activities requirements without good cause in January, 2008.

(24) Claimant had not missed any appointments prior the transit authority issues in December, 2008.

#### 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 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 (emphasis added). A claim of good cause must be verified and documented. PEM 233A states that:

“Good cause includes the following...

**No Transportation**

The client requested transportation services from DHS, the MWA, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.”

The penalty for noncompliance without good cause is FIP closure. However, for the first occurrence of non-compliance, on the FIP case, the client can be excused. This is not applicable in the current case. 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. 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.

Given that PEM 233A specifically discusses transportation issues as meriting a finding of “good cause”, the Department has the burden of proof of explaining why a claimant with transportation issues such as the ones seen here do not meet the intent of the regulations. This Administrative Law Judge is unconvinced that the Department has met that burden.

All we are given are vague statements by the Department that “no discernable progress was being made or reasonable effort put forth by the client” and that “the issues of non-compliance were within her ability to overcome” (Dept. Ex. 1); that “no steps have been taken to resolve this” (Dept Ex. 2, pg 2); and that the claimant had failed to “show any positive moves forward” (Dept Ex. 7).

Nowhere in any of these statements does the Department ever indicate exactly what the claimant should be doing to meet their vague expectations, or how the non-compliance should have been overcome. More to the point, even though nobody is disputing that the weather in December was the primary issue of claimant’s troubles, the Department and JET managers seemed to indicate in their testimony and in their exhibits that the real reason for their finding is that they’re tired of hearing the same excuse provided by the claimant, regardless of the excuse’s validity.

During the hearing, when asked to distinguish claimant's troubles from a normal finding of good cause, the Department could only point to a couple of items: that the claimant's husband had let a vehicle purchasing opportunity fall through the year before and had not purchased a car yet; and that claimant was living with a roommate who had a car. When pressed, the Department could only state that "it was not one specific issue, but a preponderance of different situations," never explaining adequately what these different situations specifically were. Furthermore, the Department was unable to recall a time the claimant had missed JET programs when the weather and transit schedule were not issues; DHS's records show that the claimant attended every meeting when the transit system was running.

Even the issues that the Department could point to as an example of these issues—lack of follow through resulting in the failure to purchase a car, and the presence of a roommate with a car—fails to stand up to reasonable scrutiny.

Department Exhibit 9, which purports to show a lack of follow through in the car issue, is not decisive in this issue. A case note on 12-27-07 reports that [REDACTED] was encouraged to "find vehicle so DHS can purchase". One month later, on 1-29-08, a case note says that [REDACTED] "has hard feelings against us and DHS for not helping him buy the van his mom signed loan papers for (says DHS reneged on promise to purchase because he hadn't been in the railroad job for 30 days and he was never told he had to be working for 30 days), reminded him we haven't been able to buy vehicles for 5-6 years now". Far from showing a lack of follow through, DHS's own exhibit shows [REDACTED] attempting to purchase a vehicle by relying on information that DHS would help with the payment, only to be told by DHS that the funds were not, and had never been, there to help him.

Furthermore, although the claimant is required to make every effort to attend scheduled meetings, or otherwise account for absences, they are not required anywhere in the regulations to utilize those benefits—which are currently the claimant’s only source of income and are provided to them by the government to ensure that the most basic needs of food and welfare are being met—to purchase an extraneous means of transportation, merely to satisfy the vague concept of “responsibility” as defined by state employees. The question is not whether every possible accommodation has been made for DHS, but whether the claimant’s failures have been unreasonable given her already depressed situation.

Little needs to be said regarding the Department’s assertion that a roommate in a separate member group is somehow responsible for chauffeuring the claimant to and from her work site, other than that the proposition is untenable. No regulation requires a third party to assume any responsibility for a claimant’s transportation; such a requirement would be completely unworkable.

The Department has also brought up the issue of the claimant failing to resolve the driver responsibility fees over the course of the last few years. While the undersigned does agree that this amount of time has been excessive on the part of the claimant, the issue is irrelevant. Failure to remove a driver’s license suspension is not relevant to the issue of the claimant’s member group owning a car, and is most definitely not relevant to the overall point of whether or not the issues that caused claimant to miss her appointments in December—the weather and [REDACTED] [REDACTED] sporadic schedule—were issues within the claimant’s control.

Other issues, such as claimant’s JET case worker claiming in her notes that claimant has been seen getting a ride from her husband, are only supported by broad assertions, rather than specific evidence.

Thus, regardless of the Department's feeling of whether the claimant is "making enough progress", the only issue to be considered is whether claimant had good cause at the time of the December incidents. The transit schedule is out of claimant's control, as is the weather, and the Department has not met the burden of proof in its explanation of why the weather and transit problems should not be good cause, beyond vague assertions that the claimant has not "assumed responsibility". Therefore, the undersigned must find that the definition of good cause has been met.

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 and WEP programs during the month of December, 2008.

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

The Department is ORDERED to remove any sanction imposed on the claimant in the current case, reschedule the claimant for all appropriate JET classes and reinstate claimant's FIP benefits retroactive to the date of case closure.

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

Date Signed: March 5, 2009

Date Mailed: March 5, 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:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.