

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: 2009-11419
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 2009
Genesee 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) Claimant was an FIP recipient in Genesee County.
- (2) Claimant was taking care of her mother, who was dealing with pre-terminal ovarian cancer.

(3) Four different doctors have stated that claimant's mother needs 24 hour a day care.

(4) Claimant was deferred from Work First until 2-27-08, under the local office discretion provision for a temporary critical event, when the deferral was removed.

(5) On 5-09-08, a DHS caseworker reinstated the local office discretion deferral, stating that the client was unable to work because she was taking care of her mother 24 hours a day.

(6) On 10-16-08, an unknown source removed the deferral again, stating that claimant was getting paid for chore services for 11 hours per week, and needed to attend Work First to meet FIP requirements.

(7) Claimant did not comply with Work First requirements, and was sent to triage.

(8) On 11-17-08, a triage was held.

(9) At the triage, claimant was told that she did not have good cause for a failure to attend Work First, because a deferral was not granted.

(10) Claimant's JET caseworker, who made the good cause determination, analyzed the determination under PEM 230A instead of PEM 233A.

(11) After the triage, claimant was given a copy of the DHS-754, First Noncompliance Letter.

(12) Claimant was given time to review the letter, but was told that if she didn't go to Work First, her benefits would be cut off, and that she needed to sign the letter to avoid that outcome.

(13) Claimant proceeded to sign the DHS-754.

(14) A new Work First meeting was scheduled for 11-24-08.

(15) Claimant continued to take care of her mother, and did not attend the 11-24-08 meeting.

(16) On 12-2-08, claimant's FIP benefits were cut off for non-compliance.

(17) On 1-18-09, claimant requested a hearing to "dispute the actions that have been taken against me in regard to my cash 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 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. Clients who have not been granted a deferral 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 non-compliance, on the FIP case, the client can be excused, as will be noted later in this decision. 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. For the first occurrence of noncompliance, the client can be excused. PEM 233A states, in part, 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...

The PEM and the PAM contain no guidance as to the intent of the term "immediate family" when discussing the illness and injury provisions of good cause determinations. While PEM 230A discusses that a child's or spouse's disabilities may qualify an individual as non-work eligible, this definition is for use specifically in contemplating a deferral, not good cause, which is a separate issue. Furthermore, if this definition was meant to be used as the definition of "immediate family", it would have been a simple matter to say "a child or spouse's debilitating illness" instead of the term immediate family. Thus, as no guidance or definition is given, this

Administrative Law Judge must conclude that the common definition of “immediate family” was intended to be used.

Black’s Law Dictionary (7th Edition 1999) defines “immediate family” as follows:

Immediate family. A person’s parents, spouse, children, and siblings.

Therefore, it follows that if the claimant’s mother has a debilitating illness that requires in-home care, and the claimant is taking care of her mother, and this has been verified by a reputable medical source, the criteria for good cause has been met, and the burden of proof will be incumbent upon the Department to show why this should not count as good cause.

Claimant’s Exhibit 1 is a collection of letters from her mother’s oncologists describing claimant’s mother as having end stage ovarian cancer. The only chemotherapy claimant’s mother is receiving is aimed at reducing pain rather than curing the disease. As a result, claimant’s mother is described as needing 24 hour care to assist with basic activities in order to avoid spending her last days in a nursing home. The sources of these letters are from 4 very reputable oncologists (two of them [REDACTED]) and are very credible. All explain that there is a need to have claimant available in the home to take care of her mother.

The undersigned believes that this is exactly the sort of situation contemplated in the good cause provisions; therefore, it is incumbent on the department to prove why this situation does not meet the determination of good cause.

The Department has only been able to point to two things: that the claimant is receiving payment for 11 hours a week to provide Home Help Services to her mother, and therefore should be available to do other work for the other 29 hours; and that PEM 230A only authorizes a deferral from JET for the caretaking of a spouse or child with disabilities.

The Adult Services Manual (ASM) is illuminating with regard to the Department's first contention. ASM 363 contains the requirements and limits for paying for Home Help Services.

ASM 363 states:

There are monthly maximum hour limits on all IADLs except medication.

The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation.

These are **maximums**; as always, if the client needs fewer hours, that is what must be authorized.

These limits when combined, add up to 43 hours a month, or roughly 11 hours a week—in other words, exactly what the claimant was getting paid for. Thus, it appears that the claimant was receiving the maximum payment she could have received for the care of her mother; while the Department could have paid more, any extra payment would have generally have been at the discretion of the a local office manager or the Department of Community Health. ASM 363. Thus, that the claimant was only getting paid for 11 hours a week is irrelevant; this is the most she could have received even if the claimant's mother required 24 hour care. Given that four respected oncologists have recommended that claimant remain with her mother around the clock, pointing out the 11 hour per week paycheck does little to rebut the presumption that the claimant has good cause.

The Department also alleges that PEM 230A only permits a deferral for taking care of a child or spouse. This is true. PEM 230A states that a caretaker of a spouse or child with disabilities is a non-work eligible individual, and is therefore, deferred indefinitely. This is also completely irrelevant. PEM 230A exists to establish, among other things, which individuals

should be deferred from employment related activities. Good cause determinations are ruled by PEM 233A, which contains completely different language—deferrals are not good cause and good cause is not a deferral. Any analysis as to a claimant’s good cause must be done under the guidelines of PEM 233A, not PEM 230A. PEM 233A specifically says “immediate family”, which is not the same as “spouse and child.”

Furthermore, even if PEM 230A was an appropriate guideline to use, the Department would still be in error. The “spouse or child” guidelines are specifically for evaluating a deferral under the non-work eligible individual guidelines. However, claimant was never, and had never, been evaluated under those standards. Department Exhibit 3 shows that claimant had been given a deferral under the local office discretion guidelines for a temporary critical event. The Department had never considered her to be a non-work eligible individual and claimant should not have been evaluated as such. PEM 233A contained the correct guidelines for a good cause determination; the Department never evaluated claimant’s good cause under the correct guidelines and is therefore in error.

The Department may contend that the claimant was given a chance to object to the good cause determination when she was given a DHS-754, but did not and thus must agree with the good cause. The undersigned must respectfully disagree.

The initial good cause determination was faulty; it was analyzed under the wrong regulations and never took into account claimant’s circumstances. Therefore, it follows that the Department erred in issuing a DHS-754 in the first place. Furthermore, even if the issuance wasn’t in error, claimant testified, and the Department did not rebut (even when asked), that she was not told that she could request a hearing as to the good cause determination. Claimant was told flatly that if she wanted to keep her benefits she would have to sign the DHS-754. If the Department had simply given the form and only told claimant to look it over and sign if she

agreed, this Administrative Law Judge would have little to say in the matter. However, when claimant was told that her benefits depended upon her signing the form, claimant was effectively denied a hearing as to the good cause matter. However, this issue is of little difference; as stated above, a DHS-754 should have never been issued, and whether or not claimant signed the form knowingly is only of academic interest.

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 November, 2008.

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

The Department is ORDERED to remove all negative actions pending against the claimant in the current matter, and restore claimant's FIP benefits retroactive to the date of case closure. Claimant is to be rescheduled for all JET classes when and if claimant's current situation that resulted in good cause changes, for better or worse.

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

Date Signed: March 13, 2009

Date Mailed: March 16, 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:

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