

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: 2009-11659

Issue No: 1038; 5013

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 26, 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 February 26, 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?

Did the department fail to process a SER application submitted by the claimant?

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 9-16-08 claimant was assigned to attend a Work First orientation located at [REDACTED] in Detroit, Michigan.

(3) When claimant arrived at this orientation, she was informed that Work First meetings were no longer held at that location.

(4) On 9-22-08, claimant was directed to attend a different orientation located at an address on West Outer Drive, in Detroit.

(5) While the orientation was at the correct location this time, the person in charge of the orientation told claimant after the class that she wasn't in the computer, and needed to contact her case worker before she would be able to return to the class.

(6) Claimant subsequently attempted to contact her case worker, repeatedly. Her phone calls were never returned.

(7) Claimant was never notified that she was to return to the class.

(8) On 9-25-08, claimant went personally to her DHS branch office and filed an application for State Emergency Assistance.

(9) This application was never processed, and no record of it was ever entered into DHS systems. No denial or approval of the application was ever issued.

(10) Claimant attempted to follow up on the application, but gave up shortly, after being unable to contact her caseworker.

(11) On 12-10-08, almost three months after the non-compliance issue, a Notice of Case Action was sent to the client, indicating that her case would be closed for failure to participate in employment-related activities, per PEM 230A.

(12) Claimant was never sent a DHS-2444, Notice of Non-Compliance.

(13) No triage was ever scheduled for the claimant to address the non-compliance issues.

(14) No DHS-754, First Case of Non-Compliance letter was ever presented to claimant.

(15) On 1-13-09, claimant requested a hearing, alleging that she had repeatedly attempted to contact her case worker with regard to the non-compliance issues, and that no decision had ever been made on her SER application.

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 State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (ERM).

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. 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. The triage meeting is scheduled by sending the client a DHS-2444 within three days after learning of the noncompliance. 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. 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 evidence of the record shows that none of these procedures were ever followed. Upon learning of the noncompliance issue, DHS simply sent the negative action notice. No DHS-2444 was sent, no triage was scheduled, and good cause was not determined. No follow up was ever recorded, and claimant's case was simply closed, with no explanation, in violation of PEM 233A. Because the Department never made a good cause determination, this Administrative Law Judge is prohibited from ruling on the issue of good cause. However, a DHS-2444 should be sent out as soon as possible, a triage should be held and a good cause determination should be made, and a DHS-754 provided if the claimant agrees with the determination. If the claimant does not agree with the good cause determination, the claimant may file an appeal on the good cause determination at that time.

With regard to claimant's application for SER, policy states that an application must be processed within 10 days. ERM 103. Claimant claims she turned in her application on 9-25-08, but the application was never processed. The undersigned finds claimant's allegations that she turned in her SER application completely credible, for several reasons.

First, claimant was initially sent to a wrong address for her first Work First orientation. DHS testified at hearing that they were unaware of when this location stopped being used for Work First training. This incident does not speak highly of the organizational skills of this particular branch office.

Secondly, DHS testified that they were unsure whether claimant dropped off a SER application. Claimant's Exhibit 1 shows that claimant did visit the branch office on 9-25-08. The

reason listed was “DTE/SER”. Claimant testified that she had dropped off application on that date. She testified to this before she had seen the sign in logs and presented them as her exhibit. Furthermore, claimant was able to remember, without prompting, that 9-25-08 was a Thursday. This speaks highly towards claimant’s credibility.

Thirdly, it took DHS almost three months to send out a negative action notice once the compliance issues with JET started. This speaks towards this particular branch’s trouble with prompt resolution of a client’s issues.

Therefore, for the reasons stated above, this Administrative Law Judge finds claimant’s allegation that she had turned in her SER application completely credible, and, given the missteps we have already seen in this case, this Administrative Law Judge does not believe it unreasonable to find that claimant’s application was never entered into the system, and thus, lost. Therefore, the application should be resubmitted, retroactive to 9-25-08 and processed in regards to the claimants troubles at that time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department did not follow any of the applicable procedures with regards to claimant’s case closure, and is in error. Additionally, the Department failed to process claimant’s SER application in a timely manner.

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

The Department is ordered to place claimant back into any and all relevant Work First activities, start the triage process, and reopen claimant’s case retroactive to the date of case closure. The Department is further ordered to obtain and process claimant’s SER application

from 9-25-08 with regards to claimant's needs at the time of the application, either by locating the original lost application, or by obtaining a new copy from the claimant.

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

Date Signed: March 9, 2009

Date Mailed: March 9, 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 

cc: 