

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: 2009-11977

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 1, 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 April 1, 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 receiving FIP benefits in Wayne County.
- (2) On 10-28-08, claimant was sent a JET Appointment Notice with a meeting date of 11-03-08.

(3) According to the MIS notes, claimant did not attend this meeting.

(4) DHS sent claimant a negative action notice alerting claimant that her benefits would be cut off on 12-27-08.

(5) It is unknown when this negative action notice was sent.

(6) Claimant was never sent a DHS-2444, Notice of Noncompliance.

(7) No triage was held.

(8) No good cause determination was made.

(9) Claimant was not offered a DHS-754, First Noncompliance Letter.

(10) Claimant's FIP grant was cancelled on 12-27-08.

(11) It is unknown if this is claimant's first incident of non-compliance.

(12) Claimant requested a hearing on 12-29-08, alleging that her FIP grant was improperly cut off.

(13) Sometime after the negative action date, but before the hearing, claimant was found eligible for a medical deferral from the JET program for pregnancy.

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. 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, noncompliance 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. The penalty for noncompliance without good cause is FIP closure. The first occurrence of non-compliance on the FIP case can be excused; subsequent incidents result in automatic sanction, absent good cause. 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. Triage meetings are scheduled by first informing the client that they have been noncompliant, through the use of a DHS-2444, Notice of Noncompliance. These forms notify the client that the Department believes they have been noncompliant, and schedules a triage meeting. 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. Should a client call to reschedule, a phone triage should be held at that time if possible. 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 record shows that the Department's procedures were almost, but not quite, entirely unlike the procedures required by the Program Eligibility Manual.

PEM 233A requires that a DHS-2444, Notice of Noncompliance, be sent within 3 days of an alleged non-compliance; the Department was unable to produce this form, or provide any proof that this had ever been done. The Department (represented by the claimant's JET caseworker) could not satisfactorily recall if this had ever been done, and the claimant testified that she had never received such a form. It is doubtful that the claimant was even notified of her noncompliance. Therefore, the undersigned finds that the DHS-2444 was never sent, in violation of PEM 233A.

This form is supposed to schedule a triage with the claimant; the Department testified that they were unsure as if the triage took place. While they recall talking with claimant at one point, claimant testified that she had never spoken with her caseworker post noncompliance, and wrote in her hearing request that she had attempted numerous times to contact her caseworker to discuss the issue. She was unable to contact her caseworker, even when she went to the DHS branch in person. Given the Department's inability to recall the facts or provide any evidence regarding the matter at hand, including providing a form that would schedule a triage, the undersigned finds the claimant's claims completely credible. It is clear that a triage was never

held. PEM 233A specifically states that a client cannot be removed from the JET program without first scheduling a triage; this was never done, in violation of PEM 233A.

The Department claimed that a good cause determination was made; however, PEM 233A states that such a determination must be made during a triage and after a claimant has been allowed to present evidence of good cause. Given the fact that a triage was never held, any good cause determination made would be insufficient. Fortunately, it is unnecessary to decide whether this good cause determination was sufficient, because this Administrative Law Judge does not believe that any such determination was ever made, except perhaps as an after-the-fact rationalization for the negative action notice. The Department was unable to provide proof that the determination was made, and testified that a DHS-71, Good Cause Determination, was not filled out. Thus, the undersigned finds that the Department never made a good cause determination, once again, in violation of PEM 233A.

The Department claims that they believed that this was not the claimant's first incident of noncompliance, so they did not need to go through the DHS-754 second chance process. However, the Department was not able to provide any proof of this fact, nor did they make an attempt to do so.

At the hearing, the Department testified that PEM 233A had been used in making their decision and that the negative action was placed on the claimant's file after consulting and using PEM 233A. However, it is plain that the only procedure from PEM 233A the Department followed in the current case was to place a negative action upon the claimant's case. She did not receive notification of the issue, she did not receive a chance to explain her situation, and the negative action was placed in direct violation of Department policy. Claimant was denied due process at every level, in a blatant violation of standard Department procedures.

A case of noncompliance does not give the Department a right to summarily cut off a claimant's FIP grant. Noncompliance only starts the process moving—a claimant still has an absolute right to be notified of the problem, and present her side. No such process was followed, or even contemplated; this was plain error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's cut off of the claimant's FIP grant in violation of the Department's own policies and procedures was improper.

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

The Department is ORDERED to restore claimant's FIP grant retroactive to the date of negative action, and reschedule claimant for JET classes, if and when claimant's medical deferral ends.

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

Date Signed: April 6, 2009

Date Mailed: April 7, 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.

2009-11977/RJC

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:

