

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: 2009-12197

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 8, 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 April 8, 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 Genesee County.
- (2) On 12-15-08, JET noted that the claimant had been noncompliant with JET activities, and placed the claimant in triage status.

(3) On 1-8-09, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage for 1-15-09 at 3:00 p.m.

(4) DHS phone records show that claimant attempted to contact his caseworker at 2:57 p.m. on 1-15-09, in order to reschedule the triage, but was unable to get a hold of his caseworker.

(5) Claimant's caseworker issued a finding of no good cause on 1-15-09.

(6) On 1-15-09, claimant's case was put into closure, and sanctioned.

(7) This is claimant's first incident of non-compliance.

(8) On 1-18-09, claimant filed for hearing, alleging that he had good cause for not attending JET, and also received his notice of triage late, and thus, had not had a chance to show good cause.

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. 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. 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. Should a client call to reschedule before the triage, a phone triage should be held at that time if possible. PEM 233A. However, it is important to note that failure to attend a triage meeting does not result in automatic case closure:

Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. PEM 233A, pg. 9.

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 claimant did contact the Department prior to the triage; claimant claims that he waited so long to contact the Department because he had only received the triage notice in the mail a few minutes before. Claimant further claims that he had good cause for being noncompliant; Genesee County JET programs had been recently consolidated, and claimant was left without transportation to his classes for several weeks.

However, the undersigned feels that there is no need to make a credibility determination with regard to claimant's allegations; PEM 233A clearly states that if a claimant calls to reschedule before the hearing, a phone triage should be held on the spot. Claimant testified, and the Department verified by a search of its phone records, that claimant called the Department at 2:57 p.m. that day to reschedule the triage. While his caseworker was probably unavailable at that time in order to talk with him and offer him a phone triage, the claimant should have been called back and offered the phone triage—calling even 3 minutes before the appointment is still an attempt to make contact before the appointment.

The Department testified that claimant had not been offered the DHS-754 second chance process because he did not attend the triage; if claimant had been offered a phone triage, there was a reasonable chance he might have taken the offer if good cause was not appropriate. Regardless, the Department should have rescheduled the triage, and at the very least, evaluated claimant's claims of good cause knowing what it did about the recent JET consolidations. It did not do so; therefore, the Department was in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department was in error when it failed to offer a phone triage for the claimant.

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

The Department is ORDERED to reschedule the claimant for a triage as required by the Program Eligibility Manual, and to make an appropriate good cause determination with regard to the claimant's noncompliance, as proscribed by Program Eligibility Manual, Item 233A.

/s/

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

Date Signed: April 20, 2009

Date Mailed: April 20, 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:

