

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: 2009-12200

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 7, 2009

Kent 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 7, 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 Kent County.
- (2) Claimant was active with the JET program.

(3) On 1-2-09, DHS received notification that claimant had not been in compliance with JET since 12-18-08.

(4) On 1-7-09 DHS also sent a DHS-2444, Notice of Noncompliance to the claimant, scheduling a triage for 1-22-09 at 2:00 p.m.

(5) Claimant was told that she had until 1-23-09 to demonstrate good cause.

(6) Claimant attended the triage on 1-22-09.

(7) Claimant brought along medical documentation to the triage, alleging that she had been sick during the time in question.

(8) This medical documentation showed claimant had a diagnosis of hyperemesis gravidarum, an extreme and dangerous type of pregnancy related sickness that affects an estimated .3% to 2% of pregnant women.

(9) Claimant subsequently terminated her pregnancy due to this complication on 1-6-09.

(10) At the triage, DHS determined that claimant's medical documentation was insufficient to grant good cause, and gave her until 4:00 p.m. that day to come up with documentation that was sufficient.

(11) Claimant was unable to secure further medical documentation within the time given by DHS.

(12) A finding of no good cause was entered by DHS, though no explanation was given.

(13) This is claimant's second incident of noncompliance.

(14) On 1-9-09, claimant filed a hearing request, alleging that she had been too sick to attend JET.

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 “noncompliance”. PEM 233A defines noncompliance 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. 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 noncompliance, on the FIP case, the client can be excused. This was claimant’s second incident of noncompliance, and was thus ineligible for second chance procedures.

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. 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.

Research indicates that hyperemesis gravidarum is a rare pregnancy complication that affects .3% to 2% of pregnancies, and is characterized by persistent nausea and vomiting associated with ketosis and weight loss. Hyperemesis gravidarum may cause volume depletion, electrolytes and acid-base imbalances, nutritional deficiencies, and even death. As compared to morning sickness, hyperemesis gravidarum tends to begin somewhat earlier in the pregnancy and last significantly longer. While most women will experience near-complete relief of morning sickness symptoms near the beginning of their second trimester, sufferers of hyperemesis

gravidarum can experience severe symptoms until they birth their baby, and sometimes after birthing. *Hyperemesis Gravidarum*, available at:

http://en.wikipedia.org/wiki/Hyperemesis_gravidarum.

Claimant alleges that she gave her caseworker copies of her medical records confirming a diagnosis of hyperemesis gravidarum at her triage. The Department testified at the hearing that she did give them some medical records; however, they felt that these medical records were inadequate for a good cause determination because there was nothing in the records explicitly stating that the claimant could not work. They further claim that they gave the claimant until 4:00 p.m. that day to provide medical documentation regarding her work capability, apparently feeling that less than hour and a half was an adequate amount of time for the claimant to secure this sort of documentation.

This Administrative Law Judge respectfully disagrees with the Department's contentions.

Assuming that the Department was correct in its contention that claimant's medical records did not establish good cause, the Department was on notice that the claimant had undergone some very serious medical circumstances during the time of the alleged noncompliance, which culminated in a pregnancy termination on 1-6-09. Given that the claimant's triage was scheduled for 2:00 p.m. that day, and assuming that the triage took around a half hour, claimant was given less than an hour and a half, factoring in travel time, to get the proof that the Department felt was sufficient.

Claimant attended the triage attempting to prove her case; her notice of noncompliance stated that she had until 1-23-09, the next day, to provide proof. Claimant had no way of knowing what amount of proof the Department would need before she came into the appointment; the Department left her so little time to gather proof that it felt was more sufficient as to be the equivalent of no time at all. Furthermore, even though claimant had until the

negative action date, 1-23-09, to provide proof, according to PEM 233A, MIS case notes reflect that no good cause was entered and claimant's case was terminated on 1-22-09. The Department testified that the time to gather proofs could have been extended; claimant's medical condition gave proof that there was a serious potential for good cause. Therefore, it would have been prudent for the Department to extend the time limit reasonably to allow the claimant to gather evidence that it felt was more sufficient. Instead, the Department gave claimant a time limit it knew she couldn't meet, and then penalized her for not meeting it. This by itself would be error.

However, that would be assuming that the documents claimant submitted were not indicative of good cause. A cursory amount of research shows that hyperemesis gravidarum is a very serious pregnancy complication that can extend past birth. Nausea is persistent throughout the pregnancy, and can credibly interfere with work related activities. Claimant testified that she terminated her pregnancy on 1-6-09, due to this complication. Claimant's hospitalization on 12-15-09 was due to dehydration and severe vomiting from the illness, and could reasonably be expected to continue until her pregnancy ended.

This type of illness is the type of illness that is contemplated by the good cause provisions of PEM 233A. Claimant could not have reasonably been expected to participate in work related activities during this time. Therefore, the Department was in error when it did not grant good cause.

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 December, 2008.

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

The Department is ORDERED to reschedule the claimant for all appropriate JET classes and/or meetings and remove the negative action from the claimant's case.

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

Date Signed: April 14, 2009

Date Mailed: April 14, 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

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