

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: 2009-12578

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 30, 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 30, 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) On 1-2-2009, claimant contacted JET and stated that she had been fired from unemployment due to tardiness.

(3) On 1-7-09, claimant was sent a DHS-2444, Notice of Noncompliance, for a failure to report to the JET program in a timely manner; a triage was scheduled for 1-26-09.

(4) On 1-26-09, claimant appeared for the triage and agreed that she was in noncompliance, and agreed to sign a DHS-754 and get back into compliance.

(5) Claimant signed the DHS-754 and returned to JET.

(6) Claimant was assigned to return to JET on 1-27-09.

(7) Claimant attended JET on 1-27-09, but did not attend on 1-28-09 through 1-30-09.

(8) Claimant was deemed not in compliance with the DHS-754, and her case was put into immediate closure.

(9) On 1-20-09, claimant filed for hearing regarding her noncompliance issues; had she been compliant with the DHS-754 process, she would have withdrawn the hearing. However, claimant elected to go forward with the hearing when her case went into negative action during the second incident of noncompliance.

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, 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, as will be noted later in this decision. 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. 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...

Claimant does not contest the first incident of noncompliance and provided no evidence that indicated that the incident that led to the DHS-754 or the Department's determination of no good cause was in any way unfair.

However, claimant alleges that she was sick during the rescheduled JET classes after she signed the DHS-754. The Department did not make a good cause determination regarding the claimant's second incident, and because this took place during the DHS-754 process, was not required to, as stated by PEM 233A.

Therefore, it falls upon the undersigned to determine whether or not claimant had good cause during her second incident of noncompliance.

In support of her allegation, claimant presented Claimant's Exhibit 1, Medical Records, which showed that claimant was excused by her doctor from all work related activities due to an illness on January 28th, January 29th, and January 30th. While the undersigned wishes that the doctor in question had been a bit more specific with regard to claimant's illness, it is not the place of a legal professional to question the orders of a doctor, especially when given on a legitimate prescription pad. PEM 233A requires that a claim of illness be verified; the evidence that claimant presents is verification enough that claimant was ill during the time in question.

As illness is a valid reason to find good cause, it is the opinion of the Administrative Law Judge that claimant had good cause for her noncompliance during the DHS-754 process. The Department should return claimant to JET classes and allow her to get into compliance.

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 January 2009.

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

The Department is ORDERED to remove the negative action associated with claimant's failure to complete the DHS-754 second chance process, and reschedule claimant for all JET classes. Claimant's FIP grant is to be restored retroactively to the negative action date.

/s/

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

Date Signed: May 8, 2009

Date Mailed: May 8, 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:

