

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: 2009-12816

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 9, 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 June 9, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for noncompliance 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 and active with the JET program.
- (2) On 10-30-08, claimant failed to turn in attendance and was marked as being out of compliance with her vocational training.

(3) On 11-12-08, claimant's caseworker was informed that claimant had not been in participation with the JET program since 10-30-08.

(4) On 11-18-08, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage for 12-2-08.

(5) Claimant attended the triage on 12-2-08; claimant reported a mental health issue.

(6) Claimant did not submit evidence of medical good cause at the triage.

(7) Claimant offered to reengage with her vocational training if she was still able, given that she hadn't participated in almost a month.

(8) If claimant was unable to rejoin her vocational classes, claimant would reengage with JET.

(9) Claimant agreed with and signed a DHS-754, First Noncompliance Letter.

(10) Claimant tried to return to her vocational training on 12-3-08, but was told she would not be allowed to return to class.

(11) On 12-4-08, claimant returned to JET, 15 minutes late, and was warned.

(12) On 12-5-08, claimant failed to report, but called in to state that there were problems with the weather and her car.

(13) On 12-9-08, claimant arrived late for class and stated that the tardiness was due to personal health problems, but did not submit documentation.

(14) Claimant was also short required job search hours for this day.

(15) On 12-10-08, claimant arrived late for class again, and was informed that this was a violation of the DHS-754. Claimant's case was pended for closure.

(16) Claimant never submitted any medical documentation, until well after her case had closed, though claimant did tell her caseworkers during the triage about some mental health issues.

(17) On 12-30-08, claimant's FIP case was closed for noncompliance.

(18) On 1-23-08, claimant requested a hearing, alleging that her doctors had removed her from work requirements due to mental illness.

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 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, a failure to participate with work-related activities can be overcome if the client has "good cause". Good cause is a valid reason for failing to participate 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 is FIP closure and a case sanction, the length of which is determined by the number of case penalties claimant has accrued. PEM 233A. Claimants under case sanction are ineligible for FIP benefits.

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. 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, the claimant is not considered noncompliant, and 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.

If good cause is not established, and the claimant has not been found noncompliant previously, the claimant can be offered a DHS-754, First Noncompliance Letter. This letter allows the claimant to agree that they were noncompliant, but also allows the claimant to promise to get back into compliance. A penalty is still assessed, but if the claimant enters into compliance with work related activities, no sanction is placed upon the claimant's case. If the claimant fails to enter compliance, a 3 month sanction is immediately placed on the claimant's case.

PEM 233A specifically states that a claim of good cause must be verified and documented. Claimant did neither.

Claimant testified that she had been ill during the dates in question, and that she had attended a doctor; however, she lost her doctor's note. Claimant was given over a week to secure the doctor's note, but claimant failed to submit any evidence. As of this writing, there is no evidence that claimant was sick during the month of October and November as she testified. Furthermore, given the length of time that claimant missed her classes, the Administrative Law Judge finds claimant's testimony of the flu highly suspect.

Furthermore, while claimant argues that her mental health disability prevented her from staying in compliance, verification of her illness was not submitted until well after claimant's case had closed; the first note was signed on 1-8-09.

Because claimant did not verify her good cause by the negative action date, 12-30-08, claimant could not legally be allowed to have good cause. This is not a judgment on claimant's credibility; the regulations clearly state that any claim of good cause must be verified and no verifications were ever presented. The test that must be used is whether the Department's decision at the time of the action, using the information they knew, or should have known, was

correct. In the current case, the Department had no knowledge regarding claimant's good cause. Claimant's good cause for the initial noncompliance still remains undocumented as of the time of the hearing. Therefore, as no good cause has been presented, the Department's decision must be correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not have good cause for her failure to attend the JET program during the month of February, 2009. The Department was correct when it closed claimant's FIP case and placed it under sanction.

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

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

Date Signed: July 16, 2009

Date Mailed: July 16, 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

2009-12816/RJC

cc:

