

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: 2009-13143
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2009
Kalamazoo 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 March 25, 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 and claimant's daughter were an FIP recipient group in Kalamazoo County.

(2) On 12-30-08, JET noted that the claimant and her daughter had been noncompliant with JET activities, and emailed claimant's caseworker to determine if the claimant's situation prevented compliance.

(3) Claimant's caseworker responded that while the claimant was homeless, this was an ongoing issue and shouldn't prevent compliance.

(4) JET then referred claimant and claimant's daughter to triage for a noncompliance issue that was not specifically addressed in the case notes.

(5) On 1-6-09, a DHS-2444, Notice of Noncompliance was sent to claimant and claimant's daughter, scheduling a triage for 1-15-09 at 10:45am and 11:15am, respectively.

(6) On 1-15-09, claimant attempted to call caseworker before the triage to reschedule, due to illness.

(7) Claimant's caseworker was not in the office, and claimant left a message requesting a call back.

(8) Caseworker attempted to call back once, but got a message stating that the claimant was unavailable.

(9) Claimant's daughter did not attend her triage, nor did she attempt to contact the caseworker.

(10) On 1-19-08, claimant's case was put into closure, and sanctioned.

(11) MIS case notes reflected that sanction for claimant's daughter was not based upon a good cause determination, but because daughter was a no-call/no-show for triage.

(12) DHS did not reschedule the triage for either claimant, or claimant's daughter.

(13) No good cause determination was made with regard to either claimant, or claimant's daughter.

(14) This is claimant's third incident of non-compliance.

(15) On 2-2-09, claimant filed for hearing, alleging that she 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 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. The penalty for noncompliance without good cause is FIP closure. The first occurrence of noncompliance on the FIP case can be excused; subsequent incidents, as is the case here, 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. 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. 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 Department’s triage procedures were wholly inadequate.

Two separate triages were initially scheduled; one for the claimant, and one for the claimant’s daughter, who was a member of the claimant’s group. While the mistake the

Department made for each triage was slightly different, the result reached for both was insufficient, and not in compliance with Department policies.

With regard to the claimant's triage, the Department made two mistakes. First, it did not offer the claimant a phone triage or offer to reschedule the triage. The Department policies are quite clear on the subject: a claimant cannot be terminated without a triage, and if a claimant calls to reschedule a triage, a phone triage should be offered on the spot. When claimant called during business hours, she was unable to contact her caseworker. Claimant's caseworker subsequently tried calling the claimant once, but she never tried calling again. No phone triage was offered, and no further triage was ever scheduled, nor was the triage ever offered to be rescheduled. No reason was given as to why a rescheduling would be out of the question. The undersigned believes that this was error.

However, even if it was not, the Department still did not implement its triage policies correctly. PEM 233A states the Department was required to hold a triage, regardless of whether the claimant was in attendance. At this triage, a good cause determination should have been made, using all known information that could contribute to explaining claimant's noncompliance, including her homelessness. There is no evidence that a triage or a subsequent good cause determination was ever held. The Department was unable to present a good cause determination at hearing, and admitted that while good cause was discussed briefly with a supervisor, no official determination had been made.

More egregiously, the Department testified at hearing that their understanding of the regulations was that if a claimant did not show up for triage, the claimant should automatically be put into case closure with no further action. This is plain error. As noted above, PEM 233A requires a triage, with or without a claimant, and requires a good cause determination. The

claimant's attendance should have no bearing on this good cause determination; if the Department is in possession of knowledge that would require a finding of good cause, it is required to find good cause, regardless of if the claimant is there or not. Given that homelessness is specifically contemplated in the good cause provisions of PEM 233A, Department's failure to make a determination and simply close the case is not harmless error.

With regard to claimant's daughter's triage, the Department is guilty of similar errors. While they were under no responsibility to reschedule the triage or offer a phone triage, due to the daughter's failure to notify the Department (though it is admittedly possible that the mother was calling to reschedule both triages), the Department still had a requirement to hold the triage and make a good cause determination. It is this Administrative Law Judge's finding that neither was done; in fact, Department's Exhibit 2, the MIS case notes, reflect that a sanction was imposed on this case specifically because the daughter was a no-call/no-show, and not because a triage or a determination of no good cause had been made. As stated above, this is plain error, and requires reversal.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's triage scheduling procedures were insufficient. Furthermore, the Department erred when it failed to make a good cause determination with regard to the claimant and the claimant's daughter.

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

The Department is **ORDERED** to reschedule the claimant and the claimant's daughter 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: March 31, 2009

Date Mailed: April 1, 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:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.