

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: 2009-14979

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 14, 2009

Saginaw 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 14, 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 Saginaw County.
- (2) Claimant's child was being cared for by a day care provider.

(3) On 12-23-08, claimant was exited from the JET program for failing to provide job logs.

(4) Claimant provided evidence of good cause, and was rescheduled for the JET program beginning on 1-5-09.

(5) On 1-5-09, claimant attended the JET program for a first day activity.

(6) Claimant attended the program during the morning with no trouble.

(7) Shortly around 1:00 p.m. that day, claimant received a call from her day care provider, requesting her to pick up her son, ostensibly, because he was sick.

(8) Claimant called her JET worker at 1:08 p.m., and left a message advising them that her son was sick, her day care provider wished for her to pick him up, and asking the worker what to do in this situation to “avoid any more mix-ups”.

(9) Claimant was due back at the program at 1:15 p.m., to take a JET aptitude test.

(10) By the time claimant picked up her child from her day care provider, it was too late to return to JET.

(11) Upon picking up her child, claimant learned that her child only had a mild case of nausea and was not seriously ill, and did not require medical treatment.

(12) Claimant therefore did not take her son to a doctor, and thus, did not get medical verification of her son’s illness.

(13) Claimant returned to JET the next day, and was told that she would be exited from the program for noncompliance for failure to complete the aptitude testing part of her first day activities.

(14) The aptitude test that claimant missed was given every Monday.

(15) On 1-13-09, a DHS-2444, Notice of Noncompliance, was sent to the claimant, scheduling a triage for 1-23-09 at 3:55 p.m.

(16) Claimant attended the triage, and explained the situation.

(17) Claimant's caseworker decided that claimant did not have good cause for leaving the JET program early, because she could not present evidence that her child was sick, because it was determined after claimant picked up her child that the child was not ill.

(18) This was claimant's second incident of noncompliance.

(19) Claimant was subsequently given a three month sanction for noncompliance with work-related activities.

(20) On 2-3-09, claimant requested a hearing regarding the no good cause determination.

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, non-compliance 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...

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency related activities....

The penalty for noncompliance without good cause is FIP closure. 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. 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.

In the current case, the Department contends that claimant was noncompliant with work related activities and lacked good cause because claimant found out after picking up her son that

he was not actually sick. Claimant disputes this finding and argues that when she left to pick up her son, she had no way of knowing the truth of the matter.

Good cause is generally defined as a set of circumstances that are out of control of the claimant that interfere with the completion of work-related activities. Our test for good cause can therefore be explained thusly: would the claimant have been compliant, but for the circumstances that led to her noncompliance?

The undersigned believes this to be the case. The claimant was attending JET activities in the morning. The Department notes in Department Exhibit 2 that the claimant contacted her JET case manager at 1:08 p.m. to explain the situation, and to ask for guidance to avoid any potential problems. The claimant returned to JET the next day. Combined, these factors indicate that the claimant wished to comply with work-related activities.

The Department contends however, that because the claimant's child was not sick, claimant could not claim good cause under the illness clause of PEM 233A. This may be true; however, there are other types of good cause besides those under the illness clause. Relevant for this case is the unplanned event or factors clause, defined above as an unplanned event that could reasonably be expected to interfere with work related activities.

When a child care provider calls a parent to tell them to pick up their child, because the provider believes the child is ill, a parent does not have the luxury of ignoring the call. The prudent course of action would be to retrieve the child. Subsequent information regarding the specifics of the child's illness, though useful for determining good cause under other grounds, is not particularly relevant to the question of whether it was reasonable for a claimant to leave JET. Regardless, the unreasonable reaction in this situation would be for claimant to have ignored her day care provider; she simply acted as any reasonable parent would in a similar situation.

The Department contends however, that there is no proof that claimant ever received a phone call in the first place, beyond claimant's own testimony. While this is technically true, upon the weighing of all the evidence, the Administrative Law Judge decides that the claimant's testimony is credible, for the underlying reasons.

First, the Department itself did not doubt claimant's story until the time of the hearing. The hearing summary relates that claimant left JET when claimant received the call, but that good cause could not be granted because the child was not actually sick. Department Exhibit 6, the triage notes, reflects that the claimant's child was ill on the date in question, but good cause was being denied due to lack of verification regarding the illness. Department Exhibit 7, the Family Self Sufficiency Plan Compliance record, shows that claimant left on the date in question to tend to a sick child, but good cause would not be given due to a lack of verification. Testimony indicates that the Department only began to verbally doubt the claimant's claims of a phone call after claimant argued that she couldn't reasonably ignore a phone call from a day care provider.

Second, the Department's own notes reflect that claimant notified the Department on the day in question that her day care had called her requesting that claimant pick up her child. This, as well as the fact that the claimant specifically requested guidance in her message (which was never given as her call was never returned), also lends credibility to the claimant.

Third, claimant attended the program in the morning; had the claimant wished to avoid compliance, it would have been far easier to claim her child was sick that morning and avoid all activities. Claimant's attendance showed that she was intending to comply, which adds to her credibility.

For these reasons, the Administrative Law Judge finds that a preponderance of the evidence shows that the claimant was called by her day care provider to pick up her child on the day in question.

As there was credible information that claimant was unable to attend JET in the afternoon, and this inability to attend was reasonable, the undersigned finds that a situation such as the claimant's should have fallen within the category of an unplanned event or factor of good cause, and must therefore conclude that the claimant would have been compliant, but for this unplanned factor. This merits a finding of good cause, and the Department was in error when it did not grant such a finding.

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 reschedule the claimant for all appropriate JET classes and/or meetings and remove all sanctions resulting from the missed classes in January, 2009.

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

Date Signed: April 20, 2009

Date Mailed: April 22, 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:

