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: 2009-15289
Issue No: 1038
Case No: [redacted]
Load No: [redacted]
Hearing Date:
April 14, 2009
Bay 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 [redacted].

(2) Claimant was required to attend JET for 20 hours per week.

(3) The week of 1-5-09, claimant's hours of participation dropped to zero hours.

(4) Claimant also failed to participate with JET during the following week.

(5) On 1-27-09, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage for 2-3-09.

(6) Claimant attended the triage and claimed illness as good cause for noncompliance, and was given until the date of case closure, 2-13-09, to provide verification.

(7) Claimant subsequently brought in paperwork and medical records indicating hospital admittances on 1-1-09, 1-19-09, 1-20-09, 1-21-09 and 1-22-09.

(8) These records indicated that claimant was ill on 1-1-09, and then subsequently entered an Addisonian crisis, a complication of Addison's disease, which culminated in her hospital stay on 1-19-09.

(9) Medical records indicate that claimant's crisis was most likely brought about by a failure to take her medications.

(10) Available literature indicates that an Addisonian crisis can develop if a patient is taking a glucocorticoid, such as hydrocortisone, and suddenly stops taking that medication.

(11) Claimant was taking hydrocortisone, and stopped taking it the week of 1-5-09.

(12) Claimant stopped taking the hydrocortisone because she felt it was making her nauseous.

(13) A side effect of hydrocortisone is nausea.

(14) After submitting the documentation, claimant was denied good cause because claimant was not in the hospital during the entire time she was noncompliant.

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

(16) Claimant was sanctioned by the department for failure to provide good cause for noncompliance.

(17) On 2-17-09, claimant filed for hearing, alleging that she had been sick during the entire time she was noncompliant, and should have been granted 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 "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.

The Department contends that PEM 233A requires a person claiming good cause for illness to present medical records covering each and every day that the person was noncompliant for.

The undersigned believes that this stance is a misreading of both the intent and the plain language of PEM 233A, and additionally, ignores the great weight of the evidence on record.

A claimant may have the flu on a date they are scheduled to attend JET, and be unable to schedule an appointment to see a doctor until the next day; when the claimant does see the doctor, the doctor will prudently write: “patient has the flu”, but will typically make no reference to what came before, or exactly how long the illness will be expected to last. Under the Department’s reasoning, such a record would be insufficient for verification purposes unless the record specifically stated each and every day that the claimant was sick. Likewise, if a claimant were to go into the hospital for a serious condition, but be released home to recuperate there over the course of the next few weeks, the Department’s logic dictates that such a claimant would not have good cause, because they were not in the hospital at the time, and every moment of their illness was not being chronicled by a medical institution. However, most doctors will only testify to that which they currently observe in the patient, and what the general expectations are of that patient’s health—as any prudent person in the scientific fields will do. Therefore, very few claimants would ever be able to prove that they were sick at the exact time of a missed JET assignment—they could ever only prove that they were sick at the exact time they went in to see the doctor or were admitted to the hospital. Such a position would essentially make the illness provisions of PEM 233A useless; we must instead inject a bit of common sense and consider what is meant by the plain language of the regulation, instead of attempting to interpret the language in the strictest sense possible.

At no point do the regulations of PEM 233A require a claimant to provide exact dates; PEM 233A only states that a claimant must provide verification for an illness that could reasonably hinder claimant’s compliance with work related activities. Requiring a claimant to provide medically documented exact dates in every circumstance would hold claimant to an impossibly high threshold not required by a plain reading of the regulations. The exact test we should use can be stated thusly: did the claimant provide verification of an illness that could

reasonably be expected to interfere with work-related activities during the time of the noncompliance?

This is where common sense comes into play. In the previous hypothetical regarding the flu, common sense indicates that flu symptoms do not develop spontaneously in a doctor's office at the exact moment of an examination. Instead, we expect symptoms to build gradually several days before hand, with some of those days potentially marked by symptoms that could reasonably interfere with work related activities. Likewise, if a claimant claimed a car accident as a reason for good cause for noncompliance, but then brought in medical records documenting the accident happened the day after claimant was noncompliant, good cause could not be granted for the day before the accident, because the claimant could not reasonably say he was injured before the accident. However, good cause would have to be granted for a reasonable period after the accident, even if the patient was recuperating at home.

Thus, while the regulations do not require exact dates, the submitted medical verification should be reasonably close to the time of the alleged noncompliance; however, the definition of the words "reasonably close" are nothing more than an estimate, and will vary from case to case, depending on the circumstances.

The Administrative Law Judge admits that claimant's illness is not one that is particularly common, and hence, may not be known to the Department when making a good cause determination. However, cursory research into the vectors of the disease turned up many interesting revelations that are consistent with the medical records claimant submitted as Claimant's Exhibit 1.

Addison's disease (also known as chronic adrenal insufficiency, hypocortisolism or hypocorticism) is a rare endocrine disorder in which the adrenal gland does not produce enough steroid hormones. Treatment involves replacement of the hormones (through oral hydrocortisone

and fludrocortisone). The most common symptoms are fatigue, dizziness, muscle weakness, weight loss, difficulty in standing up, vomiting, anxiety, diarrhea, headache, sweating, changes in mood and personality, and joint and muscle pains. Furthermore, patients with Addison's disease are at risk for a clinical complication called an Addisonian crisis. An Addisonian crisis is a constellation of symptoms, including vomiting, lethargy, fever and syncope, that indicate severe adrenal insufficiency. This may be the result of either previously undiagnosed Addison's disease, a disease process suddenly affecting adrenal function (such as adrenal hemorrhage), or an undercurrent problem (e.g. infection, trauma) in the setting of known Addison's disease. Additionally, and more importantly for this case, an Addisonian crisis may develop in those on long-term oral glucocorticoids (such as hydrocortisone) who have suddenly ceased taking their medication. The symptoms of a crisis may appear immediately, or gradually develop into a medical emergency. If left untreated, an Addisonian crisis can be fatal. *Addison's Disease, available at* http://en.wikipedia.org/wiki/Addison's_Disease.

Claimant alleges that her noncompliance was caused by symptoms of Addison's disease. The medical records support this argument.

On 1-1-09, claimant presented herself in the emergency room of Bay Regional Medical Center, complaining of nausea and vomiting. At the time, claimant was compliant with all medications, including her hydrocortisone, and was diagnosed with an unspecified myalgia, but her problems were not attributable to her Addison's disease. Claimant was discharged.

On 1-19-09, claimant was readmitted into the hospital and diagnosed with an Addisonian crisis. It was noted that claimant had been noncompliant with her medications—most importantly her hydrocortisone—for about 2 weeks prior to this admittance, which would be shortly after her discharge from her 1-1-09 admittance. Claimant had been vomiting after taking her hydrocortisone (which would be consistent with one of the side effects of the drug), and

therefore stopped taking it. Her symptoms continued to get worse until she admitted herself into the hospital on 1-19-09, where it was confirmed that she was in Addisonian crisis.

Available literature on Addison's disease is consistent with these records. Claimant had been on hydrocortisone, which has a side effect of nausea. Claimant stopped taking hydrocortisone after previously trying to get help for the nausea at the hospital on 1-1-09. However, a patient who stops taking a glucocorticoid such as hydrocortisone is at risk for going into crisis. Consistent with the medical records, claimant's symptoms got worse until she fell into Addisonian crisis, as is consistent with the progression of the illness.

As stated above, our test for whether claimant had good cause is this: did the claimant provide verification of an illness that could reasonably be expected to interfere with work related activities during the time of the noncompliance?

Claimant initially presented on 1-1-09 with nausea that could reasonably have been caused by the hydrocortisone, and was strong enough that claimant felt a need to get treatment, which would be sufficient to interfere with work related activities.. Claimant's symptoms worsened over the course of the next two weeks, and built into an Addisonian crisis. The medical records are consistent with this chain of events, and verify claimant's testimony as to her illness. While every day in between the two admittances is not covered, the provided medical records paint a reasonable picture of claimant's story, and are thus, sufficient verification. This period of time covers the time period of claimant's noncompliance. Therefore, we must conclude that claimant presented verification of an illness (Addisonian crisis) that could reasonably be expected to interfere with work related activities during the time of the noncompliance. Claimant passes our test, and therefore, has good cause.

Department raises the issue that because the medical records indicate claimant stopped taking her medications, claimant is responsible for her own illness, and therefore, should not be granted good cause. This argument fails for several reasons.

While it is true that in disability evaluations, noncompliance with medications is a sufficient cause to deny a finding of disabled, good cause is not disability, and should not be treated as such.

Furthermore, there is nothing in the language of PEM 233A that distinguishes a good cause determination in the case of a claimant caused illness. PEM 233A states that there is enough evidence for a finding of good cause if claimant presents verification of an illness. It does not say that claimant must present evidence of an illness or injury that is not claimant caused.

Additionally, while the Department may argue that such a finding violates the intention of PEM 233A, the undersigned feels this is a slippery path best avoided. Should good cause be denied because a claimant did not look both ways before crossing the street, and therefore caused an accident? Should good cause be denied because a claimant did not eat healthily and gave himself a heart attack? Both positions are untenable; and yet, they are logical outcomes should the Administrative Law Judge adopt the Department's position with regard to claimant causing her own illness. Regardless, it is debatable that claimant did cause her own illness; she felt her initial illness was caused by the medication she was taking, and the records and literature support this position.

However the illness was caused, it is undeniable that claimant was ill; the medical records support her testimony. The position taken by the Department arguing that good cause can only be granted if the claimant is capable of documenting each and every moment of good cause

is incorrect, yet this was the reason given for the decision. Claimant has met the test for good cause, and for this reason, the Department's good cause determination was in error.

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 weeks of 12-30-08 and 1-5-09, and 1-12-09.

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

The Department is ORDERED to reinstate claimant's FIP grant retroactive to the negative action date, and reschedule claimant for JET, if appropriate.

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

Date Signed: May 4, 2009

Date Mailed: May 4, 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: [redacted]