

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: 2009-15329

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 2009

Ingham 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 16, 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 Ingham County.
- (2) On 12-15-08, claimant was assigned for community service as part of the JET

program's work-related activities at [REDACTED], participating with [REDACTED]

[REDACTED]

(3) On 12-16-08, claimant was accused of stealing toys from the program, along with two other participants.

(4) Claimant was specifically accused of giving a recipient of the [REDACTED] program toys far in excess of the policy guidelines, after she had been previously warned. There were also unsubstantiated allegations that claimant had moved toys to her own car, and was seen removing toys from the work site.

(5) While it was initially reported that the [REDACTED] verified the theft, subsequent questioning by DHS discovered that it was another [REDACTED] worker who reported the theft second hand, and the theft was not verified by the coordinator, only reported to her.

(6) Claimant was rude and abusive towards the coordinator at the time of the alleged incident, before she realized she was speaking with the coordinator.

(7) Claimant was subsequently released from the program, and told not to return.

(8) No police report was filed regarding the alleged theft.

(9) On 12-17-08, a DHS-2444, Notice of Noncompliance, was sent to the claimant alleging that she had been caught stealing toys. The notice set a triage appointment for 12-29-08 at 3:00pm.

(10) On 12-29-08, the triage was held.

(11) At the triage, good cause was discussed, and it was decided that claimant violated work site policy and as such, did not have good cause.

(12) Subsequent to the triage, claimant went back to [REDACTED] and proceeded to threaten the coordinator. Claimant entered the lobby of the building yelling and kicking things.

(13) The [REDACTED] subsequently filed a PPO against the claimant, and informed DHS that not only was the claimant not welcome at the [REDACTED] she was going to re-evaluate their partnership.

(14) Claimant filed for hearing on 12-30-08, disputing the good cause findings and the testimony of the [REDACTED]

(15) This is claimant's third 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).

The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained 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.

The penalty for noncompliance without good cause is FIP closure.

Among other things, refusing to participate in assigned employment and/or self-sufficiency-related activities is defined by PEM 233A as:

Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/ or self-sufficiency-related activity,

and:

Firing for misconduct or absenteeism (not for incompetence).

Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer’s interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual’s work. PEM 233A.

The Department makes several allegations with regards to the claimant’s behavior on the day in question, all of which the claimant denies.

The prime allegation that the Department makes is that claimant stole toys during her volunteer work at [REDACTED]. This volunteer work was part of her participation in the JET program, and therefore, should the undersigned find it more likely than not that the claimant

was guilty of the allegations, the claimant would indeed be noncompliant with her work-related activities, as defined by PEM 233A above.

During the hearing, the [REDACTED] coordinator testified that another worker, who was not present to testify, informed the coordinator that claimant was taking bags of toys out to claimant's car. It was further alleged that this same worker told the coordinator that claimant was giving out "40 or 50" toys to a single family, even though that single family was only entitled to 16 toys per [REDACTED]. Claimant rebuts this, stating that she did not give any extra toys, and that the claimant was not taking bags of toys out to the claimant's personal car, as alleged, but simply helping a family take the toys out to their own car. The coordinator testified that she did not actually see the claimant do any of the things that were alleged, but instead was informed by the secondary worker that the claimant was indeed doing the activities alleged.

The [REDACTED] is the only witness to the allegations that the Department produced with any knowledge of the situation. The other witnesses who spoke on behalf of the Department had no direct knowledge at all; anything they knew came directly from the testimony before the triage of the volunteer coordinator.

Unfortunately, while the Administrative Law Judge does not find the claimant's testimony credible (for reasons that will be explained below), it must be reluctantly concluded that the Department has not met its burden of proof with regard to the alleged theft.

While the undersigned has no doubt that the coordinator truly believes that the claimant was involved in an attempted theft of toys from [REDACTED], the fact is inescapable that the coordinator has no direct knowledge of the charges. The coordinator never actually saw the activity taking place. She did not witness any of the events, nor was she able to

verify the charges against the claimant. No police report was filed. Any knowledge the coordinator did have regarding the claimant's alleged attempted theft, comes from a second worker, who reported it to the coordinator. That worker did not testify, and as the coordinator did not have direct knowledge of the matter at hand, any such statements by the secondary worker must be considered hearsay, and therefore, not evidence of the truth of the matter. The undersigned will only take the statements into consideration as evidence that the staff worker told the coordinator that something had happened; however, as there has been no chance to actually question the worker, any such statements are just that: statements, and must be accorded very little evidentiary weight.

Therefore, as this testimony is the only proof that exists that the claimant was involved in the theft of toys from [REDACTED] the undersigned is forced to decide that the Department has not met its evidentiary burden that the event took place.

This does not end our investigation into the events of the day in question, however. The Department further alleges that the claimant, when confronted by the coordinator, became rude and combative. After the triage, claimant returned to the [REDACTED] site, and proceeded to yell, kick things, and behave in a manner so threatening that the coordinator felt compelled to file a personal protection order.

Claimant alleges that she did not behave in this way. However, the undersigned finds her contentions not credible, and feels that the Department has met its burden of proof with regard to this allegation.

In this situation, the [REDACTED] is a direct witness, and provided very compelling testimony, as to the claimant's actions, and therefore, has direct knowledge of the truth of the matter. Furthermore, other Department witnesses testified that

claimant had been agitated and combative at the triage. The Administrative Law Judge observed at the hearing that the claimant was extremely combative. While the incident following the triage, in which the claimant allegedly entered the [REDACTED] and proceeded to yell and kick items around, cannot be used as evidence of noncompliance in the current matter (as it occurred after the triage, and is an entirely separate matter issue), it does provide evidence towards claimant's temperament. While different people have different thresholds for feeling threatened, any incident in which an individual feels a need to file a PPO against another certainly provides evidence that the claimant may not have been credible when she testified that she was not rude and combative during the incident at hand.

Therefore, the undersigned finds that, regardless of the claimant's guilt in the alleged attempted theft incident, claimant's behavior during the situation towards the coordinator rose to such a level as to warrant firing for misconduct as contemplated by the misconduct provisions of PEM 233A. Furthermore, such behavior was a violation of disruptive behavior clause, also found in PEM 233A. As such behavior is a reason for noncompliance, and claimant did not provide adequate justification for such behavior, the undersigned finds that the claimant was noncompliant with work-related activities without good cause, as contemplated by PEM 233A, and the Department was correct in its decision to assign a sanction to the claimant.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was noncompliant with work-related activities, and the Department was correct when it made a determination of no good cause with regard to the claimant's noncompliance.

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

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

Date Signed: April 27, 2009

Date Mailed: April 27, 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:

