

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: 2009-16425
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 22, 2009
Calhoun 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 22, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose two negative case actions and a one year 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 Calhoun County.
- (2) Claimant and claimant's husband were participants in the JET program.

(3) JET had apparently assigned claimant and claimant's husband 35 hours of work related activities between the both of them that needed to be completed weekly in order to remain in compliance. Somehow, either parent could complete some or all of the required hours for both to remain in compliance.

(4) However, if the hours were not completed, or if one parent was in noncompliance, both parents would be held in noncompliance and two sanctions would be applied.

(5) On 12-13-09, claimant's 4-year-old daughter had an extremely severe seizure and was taken to the emergency room. This seizure last over two hours and the child was eventually transferred to another hospital where she stayed for four days.

(6) Claimant's daughter is hydrocephalic and has been under treatment for epilepsy and other complications of her disability since birth.

(7) Among the discharge instructions after the seizure were that the daughter was to be monitored extremely closely for any signs of further attacks, and was to be returned to the hospital if the parents were unable to stop further seizures with the child's current medications.

(8) Claimant and her husband have four children.

(9) While the child was in the hospital, claimant went to the JET site and spoke with a JET caseworker, who told claimant that the claimant herself was excused from JET activities, but that claimant's husband still needed to complete the requisite 35 hours per week, though accommodations could be made if medically necessary.

(10) Upon discharge of his daughter, claimant's husband continued to do job search activities, but did most of them online.

(11) On 1-9-09, JET notified DHS that claimant and her husband were noncompliant with JET activities because they did not meet their job search requirements during the period after their daughter's hospital stay.

(12) On 2-19-09, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage for 2-25-09. Claimant's had until 3-2-09 to provide evidence of good cause.

(13) On 2-25-09, the triage was held with claimant's caseworker and claimant's JET caseworker; good cause was discussed.

(14) Claimant was not told to secure medical records at the triage.

(15) Claimant's JET caseworker denied telling claimant that accommodation could be made for claimant's husband, or that claimant could be excused from activities.

(16) Claimant was also told that her husband's online job searching would only be counted for 5 hours of work related activities, and that claimant should have filled out the appropriate paperwork with her DHS caseworker in order to have the missed job hours excused.

(17) Claimant's JET caseworker also told them that regardless of good cause for claimant because of her daughter's illness, because claimant's husband was not in compliance, both parents would be sanctioned.

(18) Claimant was also told not to apply for a hearing, because claimant's case was weak and that she would lose.

(19) Claimant and her husband were denied good cause. Two penalties were applied to claimant's case, and a one year sanction was applied.

(20) On 2-28-09, claimant filed for hearing, alleging that claimant was told inaccurate information by her JET caseworker, and that claimant and her husband had good cause for missing work first.

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...

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. 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. 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 current case contains several issues to be evaluated. However, before we may proceed to the merits of the case, we must first determine exactly what is at stake.

Department Exhibit 4, the MIS case notes contains information that is odd, to say the least. It was stated by claimant’s JET caseworker, in part that claimant “did not understand how she was in noncompliance and we explained to her that it is b/c the other parent was not doing the required 35 hrs per week job search. If the other parent is not doing the required hours then that makes her noncompliant also.” Testimony by the Department indicated that claimant and her husband were given 35 hours of job search between the two of them. Either parent could do all, part, or some of the job search activities, and this would count for both parents. Two penalties were applied to the claimant’s case, because the required job search hours were allegedly not completed. The Department further testified that even if good cause were found for one parent, the other parent not completing the full hours for the both of them would result in two penalties.

The Administrative Law Judge finds that this arrangement has no basis in policy. PEM 230A contains all provisions as to mandated work activities and who in each FIP group is required to conduct such activities; there is no policy that allows two members of a group to be treated as one member, though sanctioned as two. Nor is there any policy that allows two group

members to be treated as one, splitting the hours between them. If the Department feels that both members of claimant's group can be required to work, than separate required hours should be imposed upon them both; if this mandates that the 35 hours currently required of the claimants be split between them equally, so be it. If records show that one parent should remain home with claimant's disabled child, there are appropriate provisions for the deferral for that one parent, and full hours can be required of the other.

However, no regulation states that if one parent falls into noncompliance, both parents can be sanctioned. Such a policy is both unfair and contrary to law.

Therefore, we must consider both the claimant and the claimant's husband as separate participants and consider the facts of the case individually for each eligible group member. If both of them are found in noncompliance, two penalties may be incurred. If only one of them is noncompliant, only one penalty will be applied to the case.

The case is further complicated by claimant's testimony that her JET caseworker had told her that reasonable accommodation could be made for claimant's husband. The JET caseworker apparently denied making any such statements during the triage; however, this caseworker did not testify at the hearing. In fact, the Department was unable to testify as to exactly what happened at the triage beyond vague generalities about what would have been said.

The undersigned admits that the specificity, ardor, and consistency of the claimant's testimony have made this testimony very credible, even without any specific evidence to back it up. If it could be proven conclusively that the JET caseworker had made such assurances to the claimant, the undersigned could easily find for the claimant on the basis that neither claimant nor claimant's husband had ever actually been noncompliant. However, the undersigned must also admit that he finds it somewhat inexplicable that the JET caseworker would give such erroneous information, as the Department argued. As neither side has provided any hard evidence to prove

the truth of the matter, the Administrative Law Judge must conclude that what was or was not said to the claimant is ultimately insufficient to dispose of the current case.

Therefore, we must examine the specific issue of noncompliance and determine if good cause can be applied for each parent.

It is uncontested that claimant's young daughter has a history of hydrocephalus, which has resulted in complications such as infection of her shunt, mental difficulty, and most importantly for this case, a very serious case of epilepsy. This epilepsy reared in December and claimant's daughter was rushed to an emergency room, in response to an extremely bad seizure, where it took two and one half hours to get said seizure under control. Claimant's daughter was subsequently transferred to a hospital where she remained for some days later. Upon discharge, claimant and her husband were instructed to observe their daughter very closely for the next few weeks, and to bring her back to the hospital if there was any indication of another uncontrollable seizure.

The undersigned feels that this fact pattern definitively provides good cause for at least one parent. Good cause is defined as any event or cause that can reasonably be expected to interfere with work-related activities for the time period in question. Illness of an immediate family member is sufficient to find good cause, and the seriousness of claimant's daughter's illness is a textbook example of such an illness. Claimant's daughter needed to be under constant supervision until she was cleared by her doctor; medical evidence indicates that this did not happen until at least January. Thus, good cause was appropriate for one parent.

The question of whether both parents could be awarded good cause is a more difficult question. Ultimately the undersigned is swayed to award good cause for four reasons: 1) Claimant requested reasonable accommodation for the situation, regardless of how her JET caseworker ultimately responded; 2) the seriousness of claimant's daughter's illness;

- 3) claimant's husband's good faith attempt to stay compliant by continuing his job search; and
- 4) certain realities of claimant's home life and the time of year.

Claimant testified, and the Department did not rebut, that claimant went to JET on 12-16-08 to request reasonable accommodation, in light of her child's illness. While it is true that the undersigned is unsure as to exactly what was told to the claimant, at the very least, as judged in light of claimant's subsequent job searching, claimant believed that she and her husband needed only to continue work-related activities to stay in compliance. The Administrative Law Judge is convinced that claimant's and her husband's actions were taken in good faith, and is hesitant to sanction based on a good faith mistake, if this were indeed the case.

Second, all available medical evidence indicates that the daughter's illness was severe and potentially life-threatening. The daughter needed to be monitored constantly, and under such circumstances, it would be reasonable to reduce or eliminate both parents' work-related requirements entirely until the daughter was reasonably recovered. The Department stated at triage that such accommodation could not be made without proper notification and paperwork filled out by the claimants. This would be true, especially if the claimants were looking for a deferral. However, at issue is only whether or not claimants had good cause for noncompliance, and not whether the claimant should have been granted a deferral. Regardless of whether a deferral should have been granted, claimants were noncompliant and must now be examined under the light of good cause, which does not require prior notification to the Department. Thus, the undersigned feels that good cause is sufficiently broad enough, and the daughter's illness sufficiently severe to have encompassed both parents.

Third, the undersigned is significantly swayed by the fact that claimant's husband continued to search for jobs online, from home. Department Exhibit 6, claimant's Job Logs, show that claimant, on average, completed around 25-30 hours per week of online job searching.

The Department does not contest that claimant attempted to comply in this way, but counters by pointing to regulations stating that claimant could only count 5 of those hours. The undersigned generally agrees, but would point out that this fact only shows that claimants were noncompliant. This does nothing to erase the question of good cause. That claimant's husband was obviously attempting to remain in compliance while simultaneously remaining near his ill daughter speaks much to the credibility and good faith efforts of the claimants, and should sway an adjudicator towards awarding good cause.

Finally, the Administrative Law Judge must take in to account certain factors in determining good cause, in light of the orders to keep a very close watch upon claimant's daughter. Claimant has four children. This entire incident took place during mid-December, a time period when most schools are out of session. The undersigned feels that these facts would make it nigh impossible to keep as close a watch upon claimant's ill daughter with just one parent, without neglecting claimant's other children. This time of year can be especially busy for many families, and a daughter who is prone to severe, life-threatening seizures does nothing but add to the difficulty. Such difficulties would make it reasonable for the other parent to be granted good cause so that adequate observation may be kept upon the daughter, and, combined with the other factors above, would make a determination of good cause a legally correct outcome.

That being said, our final issue must be whether evidence of good cause was presented to the Department at an appropriate time; that is, a determination must be made as to whether the Department made the correct decision using the information it knew at the time it made the decision.

It is undisputed that the claimant did not present the daughter's medical records at the time of the triage, nor did she present the medical records before the negative action date. However, claimant testified at hearing that at no time were they told to secure medical records;

even at the triage, claimant was unaware that medical records could be presented. Department Exhibit 5, the good cause determination, shows that the determination was made on 2-25-09, five days before the negative action date, without looking at any medical records. Claimant testified, and the Department was unable to rebut, that claimant was told at the triage that securing the medical records would be useless because of the rights and responsibilities paper that claimant's husband had signed.

Claimant was also told not to secure the records for the hearing, and even not to bother requesting a hearing, because claimant's case was weak, and they would lose. While the Department disputed that it had opined on claimant's case in this manner, this would not be the first time the undersigned had heard of this happening, and nobody who was actually at the triage was available to testify to the veracity of this statement, besides the claimant herself.

The great weight of this evidence indicates that the Department had made their decision on claimant's case before claimant had presented any evidence. More importantly, the fact that the Department made the good cause determination on the date of the triage, when it knew that there was medical evidence to secure, highly suggests that claimant's testimony was credible when she states that they were told not to bother securing the medical records. Therefore, the undersigned believes that claimant was not allowed to present the evidence of good cause, given that the Department was on notice at the triage date (if not before, given that claimant had gone to JET on 12-16-08), that good cause potentially existed. The Department should have told the claimant to secure the medical records and given them adequate time to do so, before making a good cause determination.

Taking into account all these facts, we must now apply them to our test, as stated above: Did the Department make the correct decision in light of the information it knew at the time it made the decision? The answer is clearly no. The Department was aware, or should have been

aware, that claimant's daughter was seriously ill during the month of December. The proper test for good cause was whether or not such an illness would reasonably interfere with claimant's compliance with work-related activities during the time period in question. For the reasons stated above, daughter's illness would definitively interfere with claimant's compliance, and in all likelihood, interfere with claimant's husband's compliance as well. The Department instead decided to deny good cause to the husband, and impose two penalties on claimant's case, resulting in a year long sanction. The correct action was to grant good cause to both group members. The Department did not do this, and 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 noncompliance in the month of December, 2008. Claimant's husband also had good cause for his noncompliance.

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

The Department is ORDERED to delete all negative actions placed against claimant's case in relation to the above case, and reschedule all FIP group members of this case for appropriate work-related activities, in accordance with the regulations found in PEM 230A.

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

Date Signed: May 19, 2009

Date Mailed: May 19, 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:

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