

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: 2009-16533

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 22, 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 22, 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 12-9-08, claimant received a DHS-4785, JET Appointment Notice, and was referred to an orientation on 12-22-08.

(3) On 12-14-08, claimant experienced some complications with her pregnancy, and went to the hospital.

(4) Claimant's doctor issued a note explaining that claimant was having pregnancy related illness, and should not work through 1-16-09.

(5) Claimant did not attend her JET orientation on 12-22-08, and attempted to contact JET to let them know about the illness; this contact was never recorded.

(6) On 1-5-09, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage date of 1-13-09.

(7) On 1-8-09, claimant called DHS to let them know that she had no transportation to the triage, and was still ill.

(8) Claimant was given a phone triage on the spot, per PEM 233A.

(9) Claimant was told during the triage that her doctor's note was not good enough, and that she had a responsibility to contact JET and DHS before the absences.

(10) Even though DHS knew claimant had transportation issues, they did not give claimant a chance to turn in her doctor's note, or give her a way to get the note to them.

(11) On 1-8-08, nine days before the negative action date, claimant's caseworker made a determination of no good cause, and closed claimant's case.

(12) Claimant filed a hearing request on 2-9-09, enclosing her doctor's note, and alleging that she was never given a chance to present her good cause.

(13) This is claimant's second 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).

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 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. 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 argues that claimant did not have good cause for her failure to attend work first, and that even if she did have good cause, claimant submitted her doctor's note after the negative action period and far too late for it to have a meaningful effect on the Department's good cause determination. The undersigned would give this argument more credence if the Department had given the claimant a chance to actually submit evidence of good cause.

Department Exhibit 3, the DHS-71, Good Cause Determination, is dated and signed on 1-8-09, the day claimant called in to reschedule the 1-13-09 triage date, due to transportation and illness issues. Claimant claims that during this phone call, her caseworker informed her that her good cause doctor's note was not good enough, without ever examining it. The Department admitted during testimony that while they knew the note existed, they made no attempts to

secure the note, nor did they tell the claimant to submit the note, making claimant's allegations highly credible.

The actual determination places heavy emphasis on the fact that the claimant did not notify the Department before hand with regard to her illness; if this was a consideration in the Department's good cause reasoning, this would be error. No reading of PEM 233A can be said to require proof or prior notification of good cause before the negative action date. The fact that the determination seems to rely on the fact that claimant allegedly did not notify the Department of her absence before the fact also give credence to the claimant's testimony.

Most important however is the fact that the good cause determination was made on 1-8-09, nine days before the negative action date, and the date of the phone triage. It is uncontested that the Department knew a potential source of good cause existed; however, the claimant was not allowed any chance to submit the good cause proof before a determination was made. PEM 233A requires that the Department allow a claimant to submit evidence of good cause before the negative action date; this was not done.

The harm was doubled by the fact that claimant's evidence required a finding of good cause. Department Exhibit 9, claimant's note from her doctor, noted that claimant was seen at Sparrow OB/GYN Women's Center on 12-14-08 for a pregnancy related illness that would be expected to last through 1-16-09. The illness provisions of PEM 233A require that claimant have a debilitating illness that could reasonably be expected to interfere with work related activities during the time period of noncompliance. Claimant's note gives specific dates regarding the illness, and claimant testified that her doctor wished for her to stay off of work during the specified time period.

The Department testified that they did not believe claimant was actually ill during the period of noncompliance; however, regardless of the Department's suspicions of the exact nature

of an ill client, no part of PEM 233A allows for a Department of Human Services' caseworker to substitute their judgment for that of a licensed doctor. Such a regulation would be unworkable and would introduce rampant abuse into the system. PEM 233A only requires verification of an illness that could reasonable be expected to interfere with work related activities during the time period in question; claimant has provided that verification. Therefore, a finding of good cause was warranted, regardless of the Department's own beliefs as to the welfare of a client.

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 December, 2008.

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 the negative action from the claimant's case.

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

Date Signed: April 28, 2009

Date Mailed: April 29, 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.

2009-16533/RJC

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:

