

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: 2009-16907
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 28, 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 28, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for noncompliance 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 Eaton County, and a JET participant.
- (2) In October 2008, claimant transferred to Ingham County to live with her sister, and transferred her current FIP case.

(3) On 11-5-08, claimant was sent a DHS-4785, JET Appointment Notice, scheduling a class for 11-10-08.

(4) On 11-7-08, claimant had to leave her sister's home, and was referred to the Red Cross for emergency shelter.

(5) On 11-10-08, claimant attended JET as instructed, but it was decided that claimant's impending homelessness was of greater importance and was deferred from JET until 11-17-08.

(6) On 11-13-08 and 11-14-08, claimant attempted to contact DHS several times in order to report that she was still homeless and needed more time to find housing.

(7) On 11-14-08, claimant's application for SER housing assistance was denied because the housing she was attempting to rent was deemed too expensive.

(8) On 11-14-08, claimant stopped at JET for an unknown reason; claimant allegedly did not discuss the 11-17-08 appointment.

(9) On 11-17-08, claimant did not return to JET, due to the homelessness.

(10) On 11-17-08, a homeless mail file was created for claimant at DHS.

(11) On 11-26-08, a second application for SER housing assistance was denied for similar reasons.

(12) Around 12-1-08, claimant found housing.

(13) On 12-3-08, a DHS-2444, Notice of Noncompliance was generated and placed in claimant's homeless mail file, scheduling a triage meeting for 12-12-08.

(14) Claimant was unable to return to DHS to pick up the letter, due to lack of transportation, and thus, did not receive the triage notice.

(15) On 12-12-08, the triage was held; claimant did not attend.

(16) No good cause was found at the triage; the reasons behind the finding were that claimant did not mention on 11-14-08 that she may have trouble making the 11-17-08 appointment.

(17) On 1-14-09, claimant filed for hearing, alleging that the Department did not notify her of the triage meeting.

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...

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....

An unplanned event or factor includes, but is not limited to, domestic violence or homelessness.

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.

The Administrative Law Judge disagrees with the claimant’s contention that the Department’s actions were faulty because she was never notified of the triage or the noncompliance. The Department has adequately proven that a mail file was created for the claimant, and that the claimant had access to this file. Claimant testified that she did not have transportation with which to check this file; however, no evidence has been presented that shows that claimant attempted to contact the Department in anyway regarding this problem.

Furthermore, claimant moved into her new residence on 12-1-08; on 12-3-08, the DHS-2444 was generated and placed in the file. No evidence has been presented that claimant notified the Department of her new address so that letters could be sent to her home; in fact, all available evidence indicates that claimant made no effort to contact the Department until after the triage and negative action date. The Department cannot be faulted for the failure of the claimant to update the Department with regard to her residency status.

Nor can the Department be faulted for how it conducted the triage; in fact, the Department must be applauded for holding the triage and making an independent determination as to the claimant's good cause beyond simply closing her case because she did not appear.

However, the available evidence shows that the Department can be faulted for the criteria they used in making their good cause determination.

Good cause, according to PEM 233A, must be determined using any and all information that is known by the Department at the time of the triage and before the negative action date. Evidence shows that the Department knew the claimant was homeless, and was homeless at the time of the noncompliance. On 11-14-08, the Department denied a SER housing assistance application filed by the claimant in order to alleviate her homelessness. On 11-26-08, they denied an identical application. Given the 10 day standard of promptness regulations with regard to SER applications, this would definitively place the claimant as homeless during the exact period of the noncompliance. These denials were signed by claimant's caseworker, who also signed claimant's good cause determination. Therefore, it is clear that the Department was aware of the claimant's situation, at least until 11-26-08. This is consistent with claimant's testimony that she was homeless until sometime around the first of December.

Additionally, claimant's phone records, submitted as Claimant's Exhibit 2, show that claimant attempted to call the Department several times on 11-14-08; claimant testified that this

was to alert the Department to her continued homelessness. At the very least, this evidence lends weight to the claimant's argument that the Department should have known about her continued emergency.

PEM 233A specifically lists homelessness as a reason for a finding of good cause with regards to noncompliance issues. The Department claims that they did not know claimant was still homeless during the time in question; they knew that she had appeared at JET on 11-14-08, but no mention of her situation was discussed at that time.

The test in any administrative case must be put thusly: was the Department's action correct at the time it made it, given the information they knew at the time?

Contrary to the Department's assertion of ignorance, claimant's two SER applications, and the proof of her phone calls to the Department during the time in question, definitively show that the Department was aware, or should have been aware, that the claimant was homeless during the time of the noncompliance.

Homelessness is a valid reason for finding good cause. Therefore, the Department's finding of no good cause was incorrect, because they knew that the claimant was homeless during the time of noncompliance at the time of the triage.

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 November, 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 all sanctions and negative actions resulting from the issue at hand. It

is further ORDERED that the Department shall restore claimant's FIP benefits retroactive to the date of negative action.

/s/

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

Date Signed: June 2, 2009

Date Mailed: June 3, 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:

