

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: 2009-17428

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 5, 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 May 5, 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 Bay County.
- (2) Claimant was referred to MRS as part of her JET assignment because claimant alleged disability.

(3) MRS was unable to meet claimant's needs and claimant was referred to MRT in order to determine if claimant met the criteria for a medical deferral.

(4) On 10-28-08, JET declined to defer claimant from JET activities, stating that she was "Not Disabled—Work Ready with Limitations".

(5) Claimant was compliant with JET until January, 2009.

(6) On 1-21-09, claimant was referred to triage for failure to comply with work-related activities.

(7) Claimant attended the subsequent triage, agreed she had been noncompliant, and knowingly agreed to the DHS-754 process.

(8) Claimant was assigned a re-engagement date of 2-2-09.

(9) Claimant advised DHS that she had become employed and was now working 40 hours per week; her employment had begun on 1-19-09.

(10) On 2-1-09, claimant contacted her caseworker to let her know she had lost this job; claimant was told that the current plan was to re-engage with JET on 2-2-09.

(11) On 2-19-09, claimant submitted a DHS-49 to claim continued disability.

(12) This information was apparently similar to the information sent to MRT in October and was therefore not sent to MRT.

(13) On 2-24-09, another triage was requested due to claimant being noncompliant with JET activities.

(14) On 2-27-09, claimant was sent a DHS-2444, Notice of Noncompliance, which set a triage date for 3-10-09 at 11:30am.

(15) Claimant did not attend the triage.

(16) On 3-09-09, claimant contacted her DHS caseworker and let the caseworker know that she had a doctor appointment during the time of the triage and that claimant was trying to collect medical documentation with regard to her noncompliance.

(17) Claimant had been in a car accident on 2-22-09.

(18) Furthermore, claimant has documented bi-polar and anxiety disorder with a GAF of 49, with the highest score over the past year being 47.

(19) The triage was not rescheduled or held over the phone at the time claimant called, allegedly because the claimant did not specifically mention the word “reschedule”.

(20) The DHS-71, Good Cause Determination, states that the reason for a no good cause determination is “No show for triage”.

(21) On 3-13-09, claimant filed for hearing, alleging that she disagreed with the actions of the Department regarding the second good cause determination. Claimant specifically did not contest, and testified at hearing that she did not wish to contest, the original good cause determination that resulted in the DHS-754 process being implemented.

(22) The negative action was deleted pending the outcome of the hearing; claimant is currently receiving FIP benefits.

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, as happened initially. This incident at issue was claimant’s second incident of noncompliance, and was thus ineligible for second chance procedures. PEM 233A. It is important to distinguish these standards from the standards given in PEM 230A for a medical deferral; the criteria used to determine a deferral are not the same as those used to determine good cause for noncompliance, and care should be taken to not intermingle the two standards.

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. If

a client calls to reschedule, a phone triage should be attempted to be held immediately, if at all possible. If it is not possible, the triage should be rescheduled as quickly as possible, within the negative action period. 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 must be considered, even if the client does not attend.** 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.

Much evidence was presented at the hearing with regard to claimant's mental state, physical condition at the time of the accident, and future prognosis. Arguments were presented from both sides, along with credible expert witnesses, as to why claimant should be awarded good cause. While the undersigned finds such testimony interesting and probative, after an examination of the law and regulations, it must be concluded that the case must be disposed of upon other grounds; mainly, that the triage procedures as used by the Department were not adequate.

Department Exhibit 15, the MIS case notes contains this entry on 3-10-09:

...received a message from (claimant) yesterday that she had a dr appointment this morning following an accident on 02/22 and that she's trying to get a medical excuse. The message doesn't mention anything about rescheduling the triage.

This entry is clear evidence that claimant contacted the Department the day before to notify the Department regarding a scheduling conflict with her triage, and to let the Department know that she was attempting to secure medical evidence regarding a claim of good cause. It is

unclear as to why the Department did not provide a phone triage immediately, as required by the regulations, or alternatively, reschedule the triage as quickly as possible. The notes indicate that claimant did not specifically use the word “reschedule”, but the message that was left, according to the Department’s own exhibit, seems clear enough to a reasonable observer that claimant had a conflict with the triage, and would, logically speaking, need to reschedule. As no phone triage was offered, it was therefore incumbent on the Department to reschedule the triage. That they did not constitutes error.

This was not the Department’s only error however; Department Exhibit 13, the Good Cause Determination, specifically states that the reason for the Department’s finding was “no show for triage”. Leaving aside the fact that the Department knew that day that the claimant had a legitimate conflict with the triage time, it is clear that the regulations do not allow a failure to appear at the triage to be the determining factor behind a no good cause determination. If a claimant does not appear for the triage, the regulations state that the proper procedure is to hold the triage in the claimant’s absence, and consider all known factors regarding the claimant. The Department did not do so; therefore, the Department was in error with regard to the actual triage.

However, the Department argued at hearing that while the DHS-71 was marked as if the claimant’s no-show was the determining factor, the actual determining factor was that claimant had not been deferred from JET by MRT and there was no new medical evidence indicating claimant should have been deferred; therefore claimant could not have had good cause.

Ignoring the fact that the Department’s submitted evidence belie the testimony that they made an actual good cause determination, such a determination, if made in the manner the Department describes, would also be error.

A deferral is not a good cause determination. A deferral is based on wholly separate factors and must not be confused on the factors necessary for a finding of good cause. A deferral

is based upon the Medical Review Team's decision as to whether or not a claimant is capable of sustaining employment, based on their medical disabilities. A medical good cause determination must be based upon a good faith determination by the Department as to whether claimant's illness or disability—at the time of the noncompliance—could reasonably be said to interfere with work related activities. In other words, would the claimant have been compliant, but for their illness?

These are two very different standards. In the former, MRT must make a comprehensive assessment; in the latter, the Department must only look at the time period of the noncompliance and determine if claimant's illness affected that noncompliance. There are certain disorders that are sporadic and may not interfere with a claimant's ability to work over the long term; such disorders may not hamper employment, and would thus be inappropriate for a deferral. However, such disorders may flare up at times, and thus render a claimant eligible for a finding of good cause.

The Department testified that good cause could not be found because medical documentation, contained in a DHS-49, contained no new evidence or indications that claimant's condition had worsened. Therefore, the Department would be unable to use this as evidence to submit to MRT, and no finding of good cause could be made.

While the undersigned generally agrees with the argument that the Department was under no duty to resubmit claimant's evidence for a deferral, this rationale in no way addresses the problem of a good cause determination. The Department did not consider, at any time, whether claimant's condition would have reasonably interfered with work related activities at the time of the noncompliance. This is the good cause test, and even taking the Department's argument at face value—that they did consider good cause, and were not merely penalizing claimant for

failing to appear at her triage—it would be clear that claimant was analyzed under the wrong standard.

Furthermore, it appears, from the medical evidence submitted at hearing, that the failure to reschedule the triage and evaluate claimant under good cause standards seriously harmed the claimant.

Claimant's expert witness, her case manager at her psychiatric office, testified that claimant's current GAF score was 49, and had only been as high as 47 over the past year. He testified that claimant had an anxiety disorder that manifested in a way that would be consistent with claimant's noncompliance. Claimant's DHS-49 indicates that claimant has a severe problem with sustained social interaction at times and submitted medical evidence indicates that at the time of the noncompliance, claimant's anxiety disorder had flared up. Claimant's official prognosis is "guarded". Furthermore, claimant had been in an accident around 2-22-09, leaving her with credible allegations of further increased anxiety. Finally, claimant's bi-polar disorder appears to have a significant effect on her ability to sustain work; perhaps not enough to prohibit all work, but certainly some work, as noted by MRT when they came up with their initial denial.

Such findings would certainly be consistent with a good cause determination; however, as the Department never made an actual good cause determination, the point becomes moot, and all we can say for sure is that it appears that claimant was harmed by this decision to not reschedule the triage or make an independent determination of good cause. Therefore, the Department's decision to sanction the claimant was in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department was in error when it did not reschedule claimant's triage or make an independent determination of good cause.

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

The Department is ORDERED to reschedule claimant's triage, and to make a good cause determination using the correct policies and procedures found in the Program Eligibility Manual.

/s/

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

Date Signed: May 27, 2009

Date Mailed: May 28, 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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