

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: 2009-18128
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 20, 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 May 20, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose two negative case actions and three month sanction upon the claimant and her husband 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 Calhoun County.

(2) On 11-26-08, claimant and her partner were sent a DHS-2444, Notice of Non-Compliance, after DHS had been notified that both claimant and her partner had been noncompliant in the JET program.

(3) The notice scheduled a triage for 12-8-08 at 9:15am.

(4) Claimant and her partner did not attend triage.

(5) Claimant's FIP case was closed in a response to claimant's missed triage appointment.

(6) The Department testified several times that claimant had been found noncompliant because neither she nor her husband attended the triage.

(7) Claimant's case and her partner's case were sanctioned and closed; because a penalty was assessed for each participant, two penalties were assessed.

(8) This is claimant's first incident of noncompliance; however, because a penalty was also assessed on her partner, no DHS-754 was offered.

(9) Claimant's husband was working at least 8 hours per week during the time of the noncompliance.

(10) Claimant and her husband signed in to the JET site several times during periods when they had allegedly been noncompliant.

(11) Written notes concerning claimant and her husband were left on the file and never made it into the official MIS case notes.

(12) On 2-9-09, claimant filed a request for hearing, alleging that she had been compliant and had turned in all required job logs.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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. BEM 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. BEM 230A, p. 1. This is commonly called “non-compliance”. BEM 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... BEM 233A p. 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. BEM 233A. 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. BEM 233A.

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.** BEM 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. BEM 233A.

The Department’s procedures towards overcoming claimant’s noncompliance were inadequate. BEM 233A requires the Department to make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. Department Exhibit 1, the Hearing Summary, states that the noncompliance was assessed because claimant was a no call/no show to the triage. No mention of an independent good cause determination is made. Department Exhibit 6, the MIS case notes, state that the reason for the determination of no good cause is that the claimant did not show up for the triage. The Department testified that an independent determination was not made; they stated several times under oath that no good cause was found because the claimant did not show up for the triage. The Department also stated that no triage was held at all; when the claimant did not show up, they proceeded to close the case. Therefore, as no independent evidence has been offered to show that a good cause determination was made beyond noting that

claimant did not show up for the triage, and that all evidence in the file shows that the reason for the noncompliance assessment was because claimant did not show up for the triage, the undersigned must hold that the Department did not make an individual assessment. This is plain error.

DHS is required to hold the triage without the client, and discuss and consider all factors that are known about the client that may have contributed to good cause. A good cause determination must then be made, using these known factors. BEM 233A, p. 9. The available evidence shows that this determination was not made, and implies that the triage was not held, thus placing the Department in error.

However, this does not address the point of whether or not the claimants were even noncompliant to begin with. No triage is required if the claimant can show that they were noncompliant.

The claimant testified that she was compliant during the period in question; claimant testified that she turned in all job logs for herself and her husband during the time in question, and that these job logs contained the required hours for herself and her husband. The Department testified that they had no hours recorded for the claimant, and could not locate any job logs.

While the burden of proof is on the Department in most cases to prove that the action they took was correct, usually speaking, an absence of job logs in the claimant's case file is enough to satisfy their burden and shift the burden of proof to the claimant to show that they were not noncompliant. Unfortunately, there are enough irregularities in the current case to introduce enough doubt into the Department's case as to whether or not the Department has satisfied this burden of proof.

The first irregularity is that not all notes made it into the claimant's case file. Claimant's JET caseworker wrote several notes by hand onto the master case file; these notes concerned

claimant's husband's employment during the time period in question, but never made it into the official notes. Under questioning, the caseworker admitted that many times handwritten notes that are relevant to the case file do not make it into the official record. Given that the notes in question were relevant to the case, the Administrative Law Judge is concerned with these actions, and is forced to question what other pieces of evidence that are helpful to the claimant did not make it into the case. The undersigned must also remark that when such handwritten notes are in the case file and are relevant to the case, withholding them from the evidence packet closely skirts the line of withholding evidence, a very serious charge, especially considering that an unrepresented claimant may not know enough to request their entire case file.

Furthermore, these notes, and other notes that were in the case file, cast strong evidence that the Department was aware that the claimant's husband was working 8 hours a week during the time in question. While the Department testified that these hours were being taken into account when calculating whether the claimant and her husband were meeting their work obligations, the undersigned sees no evidence that the Department took any of these hours into account when calculating the hour totals. Under repeated questioning, the Department told the Administrative Law Judge that they had credited claimant's husband with zero hours during the time in question; additionally, not one of the submitted exhibits provides any proof that claimant's husband was credited with the verified hours. This is another irregularity that also casts doubt as to whether the Department handled claimant's case properly and calculated claimant's hours correctly.

Claimant also testified that she and her husband turned in her job logs at JET on Tuesdays during the month of October—the period of noncompliance. The Department disputed this, but testified that claimant had no reason to attend JET. Claimant was not attending classes during this time period at the JET building; the only reason claimant needed to stop by the

building during the time in question was to drop off the job logs. Department Exhibit 13, the JET sign in sheets for Tuesdays during the month of October, requested at the behest of the Administrative Law Judge, show that claimant and her husband were present at JET on each Tuesday during the month.

While this evidence is not dispositive by itself to the outcome of the case, it does add greatly to claimant's credibility, who testified that she and her husband came into JET on each Tuesday during the month in question. She described the job logs satisfactorily, and described handing them in. The addition of the sign in sheets weighs greatly in the claimant's favor. Claimant testified, without seeing the sheets, that her and her husband's name would appear on them. The claimant appeared on the sheets. Furthermore, logically speaking, the Administrative Law Judge cannot fathom why the claimant would walk in to JET only to sign the sheets, without turning in their logs. Had the logs been existent but incomplete, the undersigned would believe that the claimant and her husband were not meeting their hours, but in this case, the logs were not in the file at all.

The Department argued that the simplest explanation is that the claimant and her husband came in to sign the sheets without turning in her job logs, implying an attempt to deceive the Department. The Administrative Law Judge disagrees. The simplest explanation is that the logs were lost, especially considering the other irregularities in the case. The undersigned cannot trust that the Department did not lose the logs when they apparently do not enter written case notes into the official case record and were unaware that the claimant's husband was working at the time of the incident.

Thus, the Administrative Law Judge must conclude that the claimants turned in their job logs, as required, and their hours were not credited to their hour count. As these logs have been

lost, the undersigned will view them in the best light possible to the claimant, and will assume that they show claimants met their required hours for the time in question.

Therefore, the undersigned holds that the claimants were not noncompliant during the time period in question, and the Department was in error when they put claimants into noncompliance status in the first place.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was in error when they concluded claimant and her husband were noncompliant.

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

The Department is ORDERED to remove any negative action placed against claimant and her husband as a result of the above matter. The Department is further ORDERED to retroactively restore any benefits lost to the claimant and her husband as a result of the negative actions and sanctions. Furthermore, the Department is ORDERED to reschedule claimant for all JET/Work First classes, if it has not done so already, as is consistent with the BRIDGES Eligibility and BRIDGES Administrative Manuals.

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

Date Signed: June 30, 2009 _____

Date Mailed: June 30, 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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