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: 2009-19578
Issue No: 1038
Case No: [redacted]
Load No:
Hearing Date:
June 11, 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 June 11, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly deny claimant's FIP application 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 applied for FIP benefits in Bay County on 2-13-09.

(2) On 2-19-09, claimant was given three dates with which to begin JET.

(3) On 3-9-09 claimant showed up to her first JET appointment late with a note from her doctor, dated 3-3-09, which excused her from work activities until her "next appointment, in one week."

(4) Claimant did not have her next doctor's appointment until 3-17-09.

(5) DHS extended claimant's JET appointment orientation date until 3-16-09.

(6) Claimant did not attend this appointment, due to illness.

(7) However, this illness was not documented until 3-17-09, and the documentation was not handed into DHS until 3-24-09.

(8) This medical documentation showed claimant had a diagnosis of hyperemesis gravidarum, an extreme and dangerous type of pregnancy related sickness that affects an estimated .3% to 2% of pregnant women.

(9) On 3-19-09, having received no contact from the claimant with regard to medical documentation, claimant's FIP application was denied and a DHS-1150, Application Eligibility Notice, was sent.

(10) On 4-08-09, claimant requested a hearing, alleging that she could not comply with her JET orientation requirements due to illness.

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 specifically defines noncompliance:

> **Noncompliance** of applicants, recipients, or member adds **means** doing any of the following **without** good cause…
>
> …Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider... PEM 233A pg. 1.

The construction of this definition is interesting; it states that noncompliance is not a status unto itself. In order for noncompliance to exist, a claimant must not have good cause. If a claimant has good cause, there is no noncompliance. Therefore, simply failing to attend work-related activities or JET does not constitute noncompliance. In order to be considered noncompliant, a claimant must not only fail to attend JET or other work-related activities, but must do so without good cause.

Furthermore, there is no distinction stated here as to whether the individual is an applicant, recipient or a member add. This is important because later on in the regulation,

applicants, recipients and member adds are treated slightly differently. More specifically, on page 5 and 6 of PEM 233A, we find these clauses:

> Noncompliance by a WEI while the application is pending results in group ineligibility…A good cause determination is not required for applicants who are noncompliant prior to FIP case opening.

This leaves us with a slight conundrum. PEM 233A specifically states that the definition of noncompliance equals a failure to attend JET or other work-related activities without good cause. However, a few pages later, it specifically states that a good cause determination is not required for applicants who are noncompliant prior to approval of an FIP case.

This does not make sense. In order to determine if an applicant is noncompliant (under the definition for noncompliance we have been given) a good cause determination must be made. Therefore, noncompliance cannot exist unless it is first determined if good cause exists. However, in the case of FIP applications, we are told that no good cause determination needs to be made for noncompliance—but this is impossible, because it has been explicitly stated that the definition of noncompliance includes a determination of good cause. In other words, this clause states that a good cause determination is not required for applicants who did not have good cause. A good cause determination is implicit in our definition of noncompliance; you cannot have noncompliance without a finding of no good cause. Our clause states that a good cause determination is not necessary after a good cause determination has been made; the sentence construction, using our explicitly stated definitions does not make sense.

Thus, we must logically assume that one of these two policies contained in the regulations are incorrect. Do we assume that the definition of noncompliance is incorrect? Or do we assume that the later clause isn't written as clearly as it should be?

While it may be simpler to just assume that the policy writers meant to define noncompliance as not attending work-related activities—and thus making the actual problem for a claimant occur when the claimant is noncompliant without good cause—the Administrative Law Judge cannot, and must not, substitute definitions for what the writers of the policy actually wrote. This is even true if, later in the policy, the writers continually refer to "noncompliance without good cause" (which is redundant under the existing definition) and "good cause for noncompliance" (which makes no logical sense at all).

The policy writers specifically wrote that noncompliance means failing to attend JET activities without good cause. To rephrase this sentence in logical terms, they wrote X=(Y-Z). X is the word we are defining; Y is the starting point for that definition, and Z is the modifier to Y that completes the definition.

To illustrate, what was actually written was: Noncompliance (X) means (=) failing to attend JET activities (Y) without (-) good cause (Z).

When we state it thusly, we find that the policy writers were quite unequivocal; noncompliance **equals** failing to attend JET, without good cause. There is no parsing, no addition of commas, no typos that could possibly change the meaning. The only way we can interpret this definition differently is by substituting entire clauses and adding our own language, and the Administrative Law Judge cannot add his own wording or clauses into the law, even if it makes later usages of the term "noncompliance" more logical. It is far more acceptable to assume that when the term "noncompliance without good cause" is used, the addition of "without good cause" was a simple typographical error, because this statement is not an explicit definition. The definition must be our starting point for all further analysis; without that, all else fails. Laws require definitions, and no judge is free to ignore that definition when it has been so

explicitly defined. When given a choice between challenging the interpretation of an explicit definition and a subjective clause, the judge should always challenge the clause—that is where the error must lie, especially when we've been given a definition as clear as the case at hand. Simply put, the writers have given us our definition, and we must therefore make use of it the best we can.

So, where does that leave our second policy? How can the undersigned possibly reconcile the sentence "a good cause determination is not required for applicants who are noncompliant" when our starting definition gives this sentence a meaning of "a good cause determination is not required for applicants who do not have good cause"?

The Administrative Law Judge believes that answer can be found if we assume that the writers of the policy did not adhere strenuously to the definition that they had already set—in other words, sometimes the word "noncompliance" means a classification of recipient as we have spent the last several pages defining (i.e. a claimant is in noncompliance status, and therefore must be denied benefits), and sometimes the policy writers used the word "noncompliance" or "noncompliant" in a second way—as in "not going to JET" (i.e. the claimant was noncompliant with JET activities, but had good cause for being noncompliant).

This makes the entire policy rather confusing and arbitrary; as a general principal, a good, clear law or regulation will refrain from using the same word for several different meanings. Sadly, the policy writers did not do this, which means the undersigned must sort out what was meant where.

At some points, it is clear what the policy writers meant: when the title of a section is "Good Cause for Noncompliance", for instance, we can assume that the word "noncompliance" in that usage is our second definition—in other words, "noncompliance" is not being used as a

definition of status. The policy also discusses the outcomes of the triage process, stating that the caseworkers and supervisors must discuss “whether good cause exists for a noncompliance”. Once again, from the context, we can assume that we are dealing with our second definition. Other parts of the policy say that a claimant must be scheduled for triage when the claimant “is” noncompliant; since noncompliance status cannot be determined without a good cause determination and that determination is made at triage, we can deduce that the intent was for the second definition of noncompliance.

We can see that a pattern is developing here: when noncompliance is not used as a subject—the focus of the entire sentence—the policy is not talking about the actual status of noncompliance; we are instead using the second definition.

However, when the policy simply refers to “noncompliance”—for instance the first sentence of the clause in question says that “Noncompliance by a WEI while the application is still pending results in group ineligibility”—it is clear that the policy is referring to the actual status, defined as a failure to attend JET, without good cause. In other words, when the sentence in question uses noncompliance as the subject, when “noncompliance” is the word being modified in its clause, the policy is discussing actual noncompliance status.

This of course, brings us to the sentence in question—“A good cause determination is not required for applicants who are noncompliant prior to FIP opening”. Using our “subject” rule, we can determine that “noncompliant” is not the subject of this sentence; noncompliant is part of a clause that modifies the word applicant, our actual subject. Therefore, we can deduce that we are using our second definition and that this sentence means that “a good cause determination is not required for applicants who did not attend JET prior to FIP opening”.

However, this does not end our analysis. The rule only says that a good cause determination is not required. **It does not say that an *applicant* who does not attend JET must be found in noncompliance status.**

Noncompliance status has been defined as not attending JET without good cause—a good cause determination being required to find noncompliance status—but this clause explicitly states that the caseworker is **not required** to make a good cause determination when the claimant has not attended JET, prior to the opening of the FIP case. This is not to say that a caseworker cannot make a good cause determination—only that it is not required. Therefore, logically speaking, while the caseworker is not required to make a good cause determination, *good cause must still be determined if the caseworker wishes to place the claimant into noncompliance status.* In other words, the claimant does not have to be put into noncompliance status; however should the caseworker feel that noncompliance status could be merited in the particular situation, a good cause determination must be made.

The Administrative Law Judge does not feel that this is entirely out of line with the spirit of the regulations. The regulations are clear in that a person who receives FIP must attend JET. Conversely, if a claimant is not receiving FIP, they do not have to attend JET. When a claimant is applying for FIP, they are not yet receiving FIP; therefore, they should not necessarily have to attend JET until FIP has been granted. Thus, a good cause determination would not be required at this point—as claimant is not receiving FIP yet, the caseworker is not required to find them in noncompliance status, as attendance at JET is not yet strictly required by state and federal regulations.

There are exceptions to this rule—for instance, a situation may arise where a claimant has expressed that he will refuse to attend JET. In this case, the caseworker may wish to make a good

cause determination and find the claimant in noncompliance status for "refusing" to attend JET, thus denying benefits. However, strictly speaking, a claimant is not required to be in compliance status until FIP benefits have been approved.

The Administrative Law Judge admits fully that this may not have been what was intended with the regulations, and that the policy writers instead made a mistake with the first definition of "noncompliance", and instead meant the definition of noncompliance to be a failure to attend work-related activities. The Administrative Law Judge also apologizes for the pedantic nature and the required parsing of language that constitutes the majority of this decision. That being said, the Administrative Law Judge does not have the power to decide what was really meant by a policy; he may only interpret what was actually put down and codified into policy. If the policy writers have a problem with this interpretation, it is suggested by the undersigned that they resolve the conflicts between the actual definition and the frequent uses of the word "noncompliance" in this policy in order to provide a bit more clarity to both the undersigned and the caseworkers who are charged with applying these policies.

With regard to the current case, there is no evidence that the Department made an actual good cause determination sufficient to place claimant into noncompliance status. The application was denied when it was determined that claimant did not go to JET; no discussion was made as to whether the claimant had good cause for her failure to attend. While no triage was strictly required, some sort of attempt at communication with the claimant, especially in light of what was known about her illness at that time, would have probably been necessary in order for the Department to be able to make a full, reasoned, good cause determination. While the undersigned does understand that caseworkers are busy and often overworked, requiring a bit of actual knowledge before denying an FIP application for non-procedural reasons does not seem to

be an undue burden, especially considering that the undersigned is holding that a caseworker is not strictly required to place an applicant into noncompliance status for failure to attend JET prior to receiving FIP benefits.

As no actual good cause determination was made, claimant could not have been placed into noncompliance status. Therefore, the denial of claimant's benefits was in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, holds that the Department is not required to make a good cause determination into an FIP applicant's failure to attend JET when the FIP application is pending. However, if the Department does not make this determination, the Department may not place the applicant into noncompliance status. As the Department did not make a good cause determination in the above matter, the Department was in error when it denied claimant's FIP application.

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

The Department is ordered to approve the denied application in question retroactive to the filing date, should claimant have met all other financial factors, and reschedule claimant for all appropriate JET classes and/or meetings, should her medical status allow.

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

Date Signed: July 16, 2009

Date Mailed: July 16, 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: [redacted]