

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: 2009-19738

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 10, 2009

Genesee 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 10, 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 Genesee County.
- (2) On 1-12-09, notes were entered into the MIS case notes system that claimant had not turned in her vocational hours as required to stay in compliance.
- (3) On 1-29-2009, claimant was referred to triage.

(4) On 3-9-09, almost a month and a half later, claimant was sent a DHS-2444, Notice of Non-Compliance, which indicated that she had been noncompliant in the JET program.

(5) This notice stated that claimant had been noncompliant on 1-29-09.

(6) Claimant attended the triage and brought proof that she was compliant, but claimant's caseworker was unsatisfied as to claimant's proof that she had never been in noncompliance.

(7) On 3-24-09, claimant's FIP case was closed because good cause was not granted.

(8) No DHS-71, Good Cause Determination was completed.

(9) This is claimant's first incident of noncompliance.

(10) No DHS-754, First Noncompliance Letter, was presented to the claimant.

(11) It is unclear as to exactly how claimant was noncompliant.

(12) Claimant was enrolled in a qualified vocational school and was completing the required participation hours at the time of the noncompliance; it appears there may have been some issue with records that were submitted to JET.

(13) At the time the Department alleges that claimant was noncompliant, claimant was enrolled in [REDACTED] in a qualifying program.

(14) On 4-3-09, claimant filed a request for hearing, alleging that she had been compliant with work-related activities.

(15) Claimant was represented at hearing by [REDACTED]

#### 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).

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 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 “non-compliance”. PEM 233A defines non-compliance 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 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. PEM 233A. The

penalty for noncompliance without good cause is FIP closure. However, for the first occurrence of non-compliance on the FIP case, the client can be excused. PEM 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. 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.

DHS’s procedures towards overcoming claimant’s alleged noncompliance were inadequate. PEM 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. The Department did not produce a DHS-71, Good Cause Determination. No DHS-71 was included in the Department’s Exhibits. PEM 233A requires that a DHS-71 be completed. The Department has not proven that this form was completed. Therefore, the undersigned must conclude that no good cause determination was ever made. This is plain error.

Furthermore, if good cause is not granted, PEM 233A requires that claimant be offered a DHS-754, First Noncompliance Letter, to offer a claimant a chance to get back into compliance without sanction. While a penalty is still applied, a DHS-754 allows a claimant to agree to get back into compliance without the sanction part of the penalty. No DHS-754 was offered. The

Department has not presented any evidence that this was not claimant's first penalty. The FSSP, Department Exhibit 5, clearly shows this alleged incident as claimant's first penalty. While the Department testified that claimant had had a previous incident of noncompliance, the Department was unable to provide any proof to contradict its own best documentary evidence. As the Department's own evidence showed that this was claimant's first alleged noncompliance, the undersigned must hold that this was indeed the first incident. A DHS-754 must be offered for the first incident of noncompliance. The Department did not do this. This is also plain error.

That being said, the above points are academic if the Department cannot prove that the claimant was noncompliant in the first place. The Administrative Law Judge is not satisfied that the Department has met this burden. The Department's sole evidence of noncompliance is the MIS case notes, Department Exhibit 2, of 1-12-09, that indicate claimant has not been reporting hours for an unspecified period of time. However, Department Exhibit 3, the DHS-2444, Notice of Noncompliance, states that claimant was noncompliant on 1-29-09. Upon questioning, the Department could not state precisely how the claimant had been noncompliant, what dates she had been noncompliant on, and for how long claimant had been noncompliant. At first, the Department believed that claimant had been noncompliant in the period of 1-12-09 to 1-29-09; however upon presentation of evidence that claimant was taking college courses at that time and could not have been noncompliant the Department changed its story to an alleged noncompliance sometime in December. It could not state with precision—in actuality, it could not state at all—when and how claimant had been noncompliant.

The burden of proof is upon the Department in these sorts of cases to prove two things before the Administrative Law Judge may consider whether the claimant had good cause for her noncompliance: 1) How the claimant had been noncompliant; 2) when the claimant had been noncompliant. The Department has proven neither of these to any satisfaction, and has only

produced vague statements that JET had informed the Department that claimant was not meeting participation guidelines.

JET did indeed inform the Department of claimant's alleged noncompliance; however the onus is on the Department to verify that story—with documentary evidence—before proceeding to hold a triage. The only documentary evidence the Department had were some case notes indicating that the claimant had not been reporting some vocational hours; it is not clear when this occurred, or how specifically the claimant was failing to report. The evidence that claimant had been noncompliant was woefully lacking.

Furthermore, the claimant has proven to the Administrative Law Judge's satisfaction that claimant had been compliant. Claimant Exhibits 1, 2, 3 and 4 prove beyond any shadow of a doubt that not only was claimant compliant in the month of January (when the Department had first thought claimant noncompliant), but the presented vocational log sheets prove that claimant was compliant in the months of September through December too. While the Department claimed that they never received such documents, the Department finds the claimant's testimony that the documents were faxed in far more credible in light of the incontrovertible evidence that claimant was compliant and in light of the Department's apparent mishandling of almost every aspect of this case.

The Administrative Law Judge sees no reason that this case proceeded as far as the triage; claimant has proven quite satisfactorily that she was compliant with strong documentary evidence. The Department was unable to provide evidence to overcome its burden of proof. Even if claimant was not compliant, the Department's mishandling of the post-noncompliance procedures of PEM 233A were in error.

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 found claimant noncompliant with work-related activities. Furthermore, even if claimant was noncompliant, the Department erred when they failed to make a good cause determination and provide claimant with a DHS-754.

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

The Department is ORDERED to remove any and all negative actions, sanctions and penalties imposed upon the claimant in the above matter. Claimant's FIP benefits are to be restored retroactively to the date of negative action.

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

Date Signed: July 9, 2009

Date Mailed: July 9, 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:

