

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: 2009-20458

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 24, 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 June 24, 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 Ingham County.
- (2) On 1-26-09, claimant was assigned to triage by JET for excessive absences and a failure to meet participation requirements.
- (3) On 2-2-09, claimant was sent a DHS-2444, Notice of Non-Compliance.

- (4) The notice scheduled a triage for 2-12-09 at 1:30am.
- (5) Claimant did not attend triage.
- (6) Claimant's FIP case was closed in a response to claimant's missed triage appointment.
- (7) A DHS-71 was filed; the reason given for no good cause read: "No call/No show."
- (8) Claimant's case was sanctioned and closed on 2-24-09.
- (9) This is claimant's second alleged incident of noncompliance.
- (10) On 3-10-09, claimant filed a request for hearing, alleging that she had been compliant.

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”. BEM 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...” BEM 233A p. 1.

However, a failure to participate can be overcome if the client has good cause. Good cause is a valid reason for failing to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the claimant. PEM 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. 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.

It is important to note that claimant's alleged noncompliance occurred under the old CIMS system (and thus, were governed by the Program Manuals and PEM 233A), claimant's triage was supposed to be held under this system as well. The negative action, however, was assessed under the BRIDGES Manual. Therefore, we must first determine whether the Program Manual or the Bridges Manual applies to the current case; while the differences between the two are small, there are differences nonetheless.

Claimant's alleged actions that led to the noncompliance charge took place while the Department was following policies found in the Program Reference Manuals. The triage was scheduled under these same policies. However, the negative action itself took place under the BRIDGES Manual. No negative action had been assessed by the time of the triage.

Therefore, assessing the negative penalty under the Bridges system was error, albeit harmless error. As all procedures were conducted before Bridges, the negative action should not be assessed under the Bridges manual. This error, as stated is harmless; the Department still conducted all procedures as if it were conducted under CIMS, and thus, there was no real difference that harmed the claimant by switching the coding requirements.

However, it should be noted that should the Department be reversed in this decision, it may hold its new triage under the Bridges manual; a triage is simply a procedure and the Department may conduct its procedures in whatever manner it sees fit, as long as these procedures are codified in policy and the claimant has been given adequate notice that the procedure in question will be conducted under the Bridges requirements. However, as claimant's alleged noncompliance took place under the CIMS system, claimant's good cause claims should

be evaluated under the Program Reference Manuals, even if the procedure being conducted is being conducted under the Bridges Manuals.

The format of the triage itself will differ from what the old policies demanded. Under the old policies, the Department was required to fill out a DHS-71, Good Cause Determination, to track its reasoning for awarding or denying good cause for a failure to attend JET. Under the new policies, no such form is required—the only requirement is that the Department makes an actual determination of good cause.

In the current case, the Department's procedures towards overcoming claimant's non-compliance were inadequate. While there are legitimate questions as to whether the claimant could have attended the triage, or whether the claimant even had good cause, or whether the claimant was noncompliant, these questions are, ultimately, irrelevant. The only relevant fact is that 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. 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 Good Cause Determination, states that the reason for the determination of no good cause is that the claimant did not show up for the triage. 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. PEM 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.

This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures, and that the claimant's case should never have closed.

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 failed to make a good cause determination.

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

The Department is ORDERED to reschedule a triage for the claimant, and reopen claimant's case retroactive to the date of case closure. The Department is further ORDERED to institute any appropriate triage and post-triage procedures, including a good cause determination and a consideration of whether claimant was noncompliant in the first place, as is consistent with the Program Eligibility and Program Administrative Manuals for a second incident of noncompliance.

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

Date Signed: July 28, 2009

Date Mailed: July 29, 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:

