

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: 2009-20467

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 25, 2009

Berrien 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 25, 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 Berrien County, and a JET participant.

(2) On 3-12-09, claimant was referred to triage by JET officials for failing to attend work-related activities.

(3) On 3-23-09, a DHS-2444, Notice of Noncompliance was sent to the claimant, scheduling a triage for 4-1-09.

(4) On 4-1-09, the triage was held; claimant attended the triage.

(5) Claimant alleged that she had been in court on 3-11-09 through 3-13-09.

(6) Claimant alleged that she had been in a school meeting on 3-9-09.

(7) No good cause was found at the triage; the reasons behind the finding were that claimant did not verify her stated reasons for good cause.

(8) Claimant was deemed noncompliant.

(9) This was claimant's second incident of noncompliance.

(10) Claimant had turned in a verification of her court dates to JET; JET faxed this verification to DHS on 4-7-09.

(11) The negative action date in the case was 4-19-09.

(12) Claimant's school was supposed to fax a verification of the school meeting of 3-9-09.

(13) This verification was never received.

(14) After the hearing, claimant submitted verification that she had been in a meeting with school officials on 3-9-09.

(15) JET in Berrien County normally requires at least two unexcused absences to be considered noncompliant.

(16) On 4-15-09, claimant filed for hearing, alleging that she disagreed with the Department actions; the negative action was deleted pending the hearing outcome.

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).

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 “noncompliance”. 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 pg. 1.

However, a failure to participate in work related-activities can be overcome if the client has “good cause”. Good cause is a valid reason for failing to attend employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the individual. BEM 233A. A claim of good cause must be verified and documented. BEM 233A states that:

Good cause includes the following...

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency related activities....

The penalty for noncompliance is FIP closure. BEM 233A.

Furthermore, JET participants can not be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. BEM 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. 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 alleged dates of noncompliance that are at issue are 3-9-09, 3-11-09, and 3-12-09. During the hearing, the Department conceded that claimant had good cause on 3-11-09, and 3-12-09. Claimant had submitted a subpoena from the court that required claimant to be in court on 3-11-09 and 3-12-09. This was received by the Department before the negative action date. Good cause must be proven before the negative action date, and claimant had submitted her proof of good cause before the negative action date for those two dates. BEM 233A. Therefore, the undersigned holds that claimant had good cause for those two dates, and was not noncompliant.

With regard to the 3-9-09 date, the claimant alleged that she was in a school meeting with regard to her son’s behaviors at school. This meeting was verified via a document provided by the claimant after the hearing, which was a signed letter from the principal of the school,

verifying the claimant's attendance on the date in question. This would normally be enough to grant good cause. However, the Administrative Law Judge may only decide whether the Department's actions were correct at the time of the action, using the information that they knew at the time of the action. Claimant alleged that she believed that the school had faxed over the verification, and that the Department had the verification.

The undersigned does not find this argument credible. While it may be true that the school did not fax over the verification, claimant testified that the verification was faxed over on the date of the meeting, 3-9-09. The Department testified that the claimant was told to verify proof of the school meeting, and that claimant never did so. Claimant did not dispute this, and stated only that the school was supposed to have sent over the verification. However, if the Department was already supposed to have verification, claimant should have been suspicious when the Department told claimant to secure the same verification in order to prove good cause. Claimant made no attempt to secure the verifications, or inquire as to whether the verification had arrived. Claimant may have believed the school sent over the verification; however, this belief was not reasonable in light of the Department requests.

However, regardless of claimant's shortcomings with regards to securing the verifications of the school meetings, the undersigned is not inclined to punish the claimant with a 3 month sanction as a result of this mistake. Regardless of when the verification came in, claimant has provided proof that she was at the meeting as stated, and therefore, had good cause. However, given the above stated test, the Administrative Law Judge will not find for the claimant, nor any future claimant, on that sole fact. The undersigned holds that situations such as these demand some sort of mitigating factor with regard to the claimant's failure to return the verifications.

Dispositive in the current situation is the fact that the Department testified that a claimant must have two unexcused absences to normally be considered non-participatory with JET.

Claimant had only one unexcused absence by the time of the negative action date on 4-19-09; the other two dates should have been excused, as discussed above. Furthermore, it appears that the claimant turned in proof of her court dates to JET shortly after she appeared in court. However, JET referred claimant to triage during the time claimant was in court on 3-12-09—she was removed from the program for a failure to verify an unexcused absence when the reason for the absence was still ongoing. If a client normally needs 2 unexcused absences to be considered non-participatory, and claimant was referred during her second non-excused absence, without being given a chance to prove the reason behind that absence before triage, the logical conclusion is that claimant probably should never have been referred to triage in the first place.

The undersigned is hesitant to sanction a claimant for one unexcused absence—that, under normal circumstances, would have been excused—when most claimants would only be sanctioned for at least two or more unexcused absences. The prevalence of the mitigating factors in this case—the fact that claimant actually had good cause for all dates, the fact that two unexcused absences are normally required for a triage—is enough for the undersigned to give claimant the benefit of the doubt with regard to a mistake that, while not reasonable, was more likely the result of some momentary foolishness than outright maliciousness.

Therefore, the undersigned holds that the Department was in error when it did not grant good cause upon the receipt of the proof of good cause with regard to claimant's court dates.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had good cause for her failure to attend the JET program during the month of March, 2009.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED. The Department is ORDERED to remove all negative actions and reschedule claimant for all appropriate JET classes.

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

Date Signed: September 1, 2009

Date Mailed: September 2, 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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