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: 2009-21221
Issue No: 1038
Case No: [redacted]
Load No:
Hearing Date:
June 9, 2009
Kent 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 9, 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 a FIP and FAP recipient in Kent County.

(2) Claimant was participating in vocational training to be a medical assistant 20 hours per week.

(3) This vocational training was of a type that would count as participation in work-related activities.

(4) On 2-23-09, claimant had an initial meeting with JET where she was informed that she was to meet her 30 hours per week requirement by participating in JET activities until her vocational training could be approved.

(5) On 2-25-09, claimant was approved for FIP benefits.

(6) During the weeks of 3-9-09 and 3-16-09, claimant did not meet her required participation hours.

(7) Claimant alleged that this was because she was participating in both her classroom hours and the full hours required at JET.

(8) Claimant voluntarily chose to cut back on her JET hours to keep up with her class work.

(9) By the week of 3-16-09, the triggering week of noncompliance, claimant had still not been given an approval or denial for her vocational course hour participation.

(10) The Department testified that no approval or denial had been given because of a backlog of work.

(11) The Department further testified that claimant would have been approved for these hours during the subsequent week; however, because claimant was noncompliant for the previous weeks, the Department did not process the approval.

(12) Had the Department granted approval for claimant's vocational hours, claimant would have been over-compliant during the weeks in question, logging in 38 hours of work-related activities.

(13) On 3-26-09, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for 4-3-09.

(14) Claimant attended the triage.

(15) At the triage, the Department refused to grant claimant good cause, arguing that until her vocational approval was granted claimant would have to either stay compliant with either both programs or only the JET programs, regardless of how long they took to process the vocational hour approval. Because claimant admitted that she had voluntarily cut back on her JET hours, she was deemed to be noncompliant with no good cause.

(16) Claimant was presented with a DHS-754, First Noncompliance letter that stated that claimant had until 4-7-09 to get into compliance with work related activities.

(17) On 4-7-09, claimant reported as required to the work site.

(18) Claimant was made aware of a requirement that stated that children were not to be brought to any work-related activity.

(19) During this day, claimant was made to reprocess all initial paperwork.

(20) Claimant still had not been processed for a vocational hour deferral.

(21) When processing the paperwork, claimant's caseworker became aware that claimant's children were in the car.

(22) Claimant was dismissed from the site to remove her children, after being told that children were not allowed anywhere on the premises, regardless of whether the children were actually with the claimant.

(23) Claimant took her children to a different location.

(24) When claimant returned, she was told that she had arrived back too late and was therefore not in compliance. Claimant was dismissed from the class and scheduled for benefit termination.

(25) After being told this, claimant became extremely agitated with the Department staff.

(26) On 4-24-09, claimant filed a request for hearing, stating that she did not agree with the Department action.

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 Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. 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 pg. 1.

An FIP/RAP group containing only one work eligible individual parent when the youngest child in the group is 6 years old or greater must complete 30 hours of work related activities per week to stay in compliance. Work related activities must contain at least 20 hours per week of "core activities". Core activities include vocational educational training, including condensed educational training. PEM 228. Other core activities include employment, job search activities and on the job training.

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 states, in relevant part, that:

> If the noncompliant client meets or if a phone triage is held with a FIS and/or the JET case manager and the decision regarding the noncompliance is No Good Cause, within the negative action period, do the following….
>
> 2. Discuss and provide a DHS-754, First Noncompliance Letter, regarding sanctions that will be imposed if the client continues to be noncompliant.
>
> 3. Offer the client the opportunity to comply with the FSSP by the due date on the DHS-754 and within the negative action period…

> 5. If the client accepts the offer to comply and agrees with the department's decision of noncompliance without good cause, use the first check box on the DHS-754 and document compliance activities. Include the number of hours of participation the client must perform to meet the compliance activity requirement. Advise the client that verification of the compliance is required by the due date on the DHS-754…
>
> 9. When the client verifies compliance within the negative action period and is meeting the assigned activity that corrects the noncompliance, delete the second negative action. If the case closed in error, reinstate the case with no loss of benefits…

Claimant argues that she had been in compliance by participating in her vocational school activities and that the Department should have made their approval sooner; it was unfair to require claimant to both be compliant with JET job search activities 30 hours per week in addition to her schooling. The Administrative Law Judge agrees.

PEM 228 specifically says that participation in a vocational education course is a core activity that counts towards work participation requirements. PEM 228, more specifically, does not specify that the Department must process the paperwork in order for these types of classes to count. Furthermore, even if PEM 228 did state that that the Department must first process the paperwork, it is extremely apparent in this situation that the Department had been extremely lax in processing the claimant's case.

Claimant first attended JET on 2-23-09. By the time claimant had been found non-compliant on 3-20-09, almost a month had passed—and the Department still had not processed claimant's vocational exemption. The Department stated that this was due to a backlog of paperwork; while the Administrative Law Judge understands the manpower constraints that the State of Michigan is operating under at present, the undersigned does not feel that a backlog of work excuses a delay in processing of a full month. This may have been excusable if there was some indication that claimant's vocational classes were in some way questionable as to whether

they counted towards participation requirements; however, the Department conceded at hearing that claimant's classes would have counted and the only reason they had not counted up to that point was because of the processing delay.

The Department argued that claimant had been noncompliant; until she was approved, claimant had to attend the JET classes, regardless of her issues with school work. If claimant could not keep up with the requirements of her schooling, the claimant should have given that up first and continued with her job search activities. The undersigned finds that this position exhibits a supreme misunderstanding of the realities of life and is unsupported by both policy and the mission of the Department of Human Services.

It is true that claimant could have given up her schooling and stopped attending classes that she is ostensibly taking in order to remove herself from public benefits. However, if the undersigned were to take that position, he would effectively be agreeing that a claimant first has a duty to fail her classes in favor of conducting job search activities while the Department is processing her case (no matter how long the Department takes to process the case). It would not matter if that claimant would have been deferred out of these job search activities had the Department processed claimant's application in a reasonable amount of time.

This is even more egregious given the Department's position that, while claimant was in noncompliance, the deferral would not and could not, be processed; in other words, while the deferral would be prima facie evidence that claimant had actually complied (and was therefore not in noncompliance), the Department would not consider whether claimant was actually in compliance while claimant was in noncompliance status.

This logic utterly befuddles the Administrative Law Judge; it is uncontested that the only reason claimant was in noncompliance was because she could not keep up with both the required classroom hours (which may have been countable hours) and the job searching activities. Yet the

Department has argued that once claimant was placed in noncompliance status, it could not determine if these vocational hours were actually countable.

The Administrative Law Judge disagrees; it is not unreasonable to require that the Department first determine whether claimant was actually noncompliant before sending claimant to triage.

The Department has also taken the position that it did not require her to attend class, but did require her to attend JET, therefore triggering noncompliance; however, this argument ignores the fact that logically, as claimant could not credibly drop her classes while the Department took its own time to process her case, the Department was effectively requiring claimant to complete 50 hours of work-related activities.

While the Department representatives had no apparent problem with claimant falling behind in her coursework, the Administrative Law Judge finds this expectation to be untenable and contrary to the mission of the Department of Human Services in favor of bureaucratic red tape. The Department's position would require the claimant to participate in almost double the required participation hours while her application is pending. The application and deferral could remain pending indefinitely, and thus claimant would effectively have to complete two requirements indefinitely. This is completely unsupported in policy.

Additionally, this position ignores the fact that claimant's position and noncompliance was entirely the fault of the Department. The only reason that claimant was noncompliant in the first place was because the correct officials had not determined whether claimant's vocational hours were countable. Had the Department done this the week of 2-23-09, when claimant first entered the JET program with orientation, the entire situation could have been avoided. That it did not do so is not the fault of the claimant, and the claimant should not be punished.

Finally, PEM 233A specifically states that noncompliance means a "failing or refusing" to engage in work-related activities. It is not clear in the present case that claimant failed or refused to comply. Claimant attempted to comply with the best of her ability; she was foiled by the Department's insistence that she complete almost double the amount of required activities while the application was pending. When claimant finally stopped attending JET 3 weeks later, she still attended vocational classes—vocational classes that fell within the definition of PEM 228, and was still meeting her required hours. This is not "failing or refusing to engage in work-related activities". This is the exact opposite, in fact—claimant was more than meeting the requirements of PEM 228 and PEM 230A by participating, according to the Department's own notes, 38 hours per week.

Therefore, for the above reasons, the Department was in error when it decided that claimant was noncompliant.

With regard to the DHS-754 and the subsequent events, the Administrative Law Judge will only note that the triage should never have happened; claimant was not noncompliant and a triage is only administered when a claimant is noncompliant. Furthermore, claimant can only be offered a DHS-754 if she has been noncompliant; claimant was not noncompliant, and therefore, could not have been offered a DHS-754. Therefore, any issue that arose because claimant was engaged in the DHS-754 process at that point is moot; as claimant was never noncompliant, claimant could not have been engaged in the DHS-754 process.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was never in noncompliance.

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

The Department is ORDERED to reopen claimant's case and restore all benefits retroactive to date of negative action. The Department is further ORDERED to remove any and all negative actions, sanctions, and penalties that have been placed upon claimant's case with regard to the initial noncompliance, including the negative action that resulted from claimant's alleged failure of the DHS-754 process. Finally, the Department is ORDERED to reschedule claimant for all required JET activities, if it determines that such activities are necessary, after a determination has been made as to whether or not claimant's vocational courses count as core work-related activities, as described in PEM 228.

/s/_____
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: [redacted]