

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: 2009-21782

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 30, 2009

Washtenaw 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 30, 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 Washtenaw County.
- (2) Claimant was also participating in college level courses in lieu of job participation hours, as approved by JET.
- (3) On 1-5-09, claimant was found to be noncompliant with work related activities.

(4) Claimant had been participating with JET through school hours, and failed to keep up on her hours during the holiday break.

(5) Claimant admitted at the time that she had been noncompliant, and was given a DHS-754, First Noncompliance Letter, which allowed her to avoid a sanction.

(6) Claimant was told at the time the necessity of keeping up her participation hours during school breaks and was sent back to JET.

(7) On 4-20-09, claimant was referred to triage again, allegedly for the exact same reason.

(8) Claimant was allegedly not turning in required job logs, and was not meeting her required hours of work participation while on school break.

(9) Claimant was given credit for 13 hours of participation during the week of April 12, 2009.

(10) On 4-23-09, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for 4-28-09, at 2:30pm.

(11) Claimant attended the triage and a determination of no good cause was made.

(12) This is claimant's second alleged incident of noncompliance.

(13) At the triage claimant argued that she was unaware of the requirements needed to stay compliant.

(14) Claimant alleged at the triage that she had been told to work on items necessary to complete her degree requirements; claimant did as she was asked to do, and was still held noncompliant.

(15) On 6-1-09, claimant's case was sanctioned and closed.

(16) On 4-29-09, claimant requested a hearing, stating that she disagreed with the department action, and that she had not been noncompliant.

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 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... PEM 233A pg. 1.

However, a failure to attend 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 claimant. PEM 233A. A claim of good cause must be verified and documented. The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance, on the FIP

case, the client can be excused, with certain conditions, as outlined on a DHS-754, First Noncompliance Letter; unfortunately, this was claimant's second alleged incident of noncompliance, and thus, she was not eligible for a DHS-754. PEM 233A.

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. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date; should a determination of no good cause be made, claimant's may agree to the conditions set forth in the DHS-754 to avoid a sanction. PEM 233A.

Claimant's JET case is admittedly a unique case; most JET claimants meet participation requirements through job search activities. Claimant, due to her particular circumstances, is unable to participate in this manner. While claimant could do job search activities, the undersigned does not particularly see the point in doing so; claimant would only be participating at JET for the week she is on break from school. Any job search activities she did could not be followed up upon. If she did get a job offer, claimant, due to her school responsibilities, is not in a position to take the job. The undersigned sees no reason to require claimant to search for jobs that she cannot take; doing so would be a waste of the claimant's time, as well as any prospective employers.

This is not to say that claimant does not have any participation hours during the time she is on break from school; both federal and state regulations are quite clear that a claimant must meet all required hourly standards. The question, therefore, is what can claimant do during this brief time when she cannot meet her participation requirements though her approved educational curriculum?

The Administrative Law Judge feels that this issue is within the discretion of her JET case managers. They can require certain workshops, or have the claimant do other things that

might make her ready to take on a job once claimant has graduated. JET should have the discretion to come up with a reasonable curriculum for the claimant that finds themselves in the situation that claimant did.

The Administrative Law Judge is not convinced that JET did any of this in the current situation. According to claimant's credible testimony, when claimant attended JET, the office was unsure exactly what to do with claimant. Claimant was subsequently given unclear instructions that she attempted to follow with the best of her ability. Department Exhibit 7, the MIS case notes, states that on April 13th, claimant entered asking for guidance on staying compliant. Claimant was passed off to another caseworker. This corroborates claimant's testimony. When claimant returned the next day to speak with this caseworker, claimant alleges that she was told to just work on her graduation requirements and attend some workshops, and that that should be enough to keep her in compliance. Claimant did both.

However, the MIS case notes state that claimant was advised to do job search activities. Given that any job search at that point in time would have been a waste of time for everybody involved, the undersigned simply does not find it credible that a caseworker advised claimant to do this. This caseworker did not testify at the hearing; the undersigned therefore finds that the claimant's testimony is enough to balance the Department's notes on the matter, especially given that the undersigned would find the assigned activities to be counterproductive (at best), if the notes are correct.

Furthermore, it appears that the Department believed claimant's allegations as well. When claimant was referred to triage, the Department attempted to "give claimant the benefit of the doubt" and gave participation hours credit to claimant for many activities that would normally not be counted.

However, these hours were deemed insufficient, and claimant was still referred to triage. JET allegedly told the claimant that if claimant was unsure as to what she was supposed to do, she should have requested more clarity in her instructions.

The Administrative Law Judge finds this statement incredible. Given that the Department had already penalized claimant for the exact same issue, and given that it is uncontested that claimant came in during the first day of her break seeking guidance in staying compliant, and given that it is obvious from the case notes that JET gave claimant confusing and contrary instructions, the undersigned does not feel that the onus was on the claimant to somehow find ways to keep herself compliant. Claimant was already doing what a reasonable person would in that situation: going to the work site and asking for help. Claimant was instead passed to a different worker, who (in the best light possible) told claimant to do busy work because JET had no real idea what to do with claimant. It is rather obvious that JET had no plan for claimant's activities, yet somehow expected her to stay compliant during the week.

Noncompliance exists when a claimant refuses or fails to participate in work-related activities, without good cause. Given the facts surrounding this case, the undersigned fails to see how the claimant refused or failed to participate in work-related activities. She certainly didn't refuse to do so; claimant went into JET and requested specific instruction on staying compliant. Nor did claimant fail to participate—by all accounts, claimant attempted to the best of her ability to participate in a manner consistent with the advice that she was receiving from JET workers. That this instruction was wrong, incomplete, or unclear is hardly the fault of the claimant. In order to charge claimant with a failure to participate, JET would be best advised to have a plan in place to allow people in claimant's position to be given a chance to participate. It has not been proven that such a plan existed at the time.

The undersigned finds the claimant credible that she received confusing and inconsistent instruction. Furthermore, the undersigned finds the claimant credible that she attempted to participate to the best of her ability. For that reason, the Department was in error when it determined that claimant was noncompliant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was compliant with work-related activities during the week of 4-13-09 to 4-17-09.

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

The Department is ORDERED to reinstate claimant's benefits retroactive to the date of negative action and delete all negative actions and penalties from the claimant's case resulting from the matter at hand. The Department is further ORDERED to reschedule claimant for all relevant work-related activities, including JET classes, if necessary.

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

Date Signed: August 4, 2009

Date Mailed: August 5, 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.

2009-21782/RJC

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:

