

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: 2009-22204
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 21, 2009
Eaton 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 July 21, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month sanction upon the claimant for non-compliance 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 and her husband were FIP recipients in Eaton County.
- (2) Claimant and her husband were participants in the JET program.
- (3) On April 17, 2009, JET notified claimant's caseworker that both claimant and claimant's husband had been non-participatory with JET program attendance.

- (4) On April 28, 2009, a DHS-2444, Notice of Noncompliance was sent to claimant, scheduling a triage meeting for May 5, 2009.
- (5) Claimant had been having a problem pregnancy, as well as other illness issues.
- (6) The Department decided that neither claimant nor her husband had acceptable good cause for their non-participation with JET.
- (7) While claimant has never had an incident of noncompliance before, claimant is ineligible for the DHS-754 second chance procedure because both claimant and claimant's husband are each being considered for a separate incident of noncompliance, even though this stems from the same incident.
- (8) On May 7, 2009, claimant requested a hearing, alleging that neither participant had been fully briefed on JET requirements, and that claimant's illness issues presented difficulties in maintaining participation.

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 “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 pg. 1.

However, non-participation can be overcome if the client has “good cause”. Good cause is a valid reason for non-participation with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participatory person. BEM 233A. A claim of good cause must be verified and documented. BEM 233A states that:

“Good cause includes the following...

Illness or Injury

The client has a debilitating illness or injury, or an immediate family member’s illness or injury requires in-home care by the client....”

The penalty for noncompliance is FIP closure. However, for the first occurrence of non-compliance on the FIP case, the client can be excused, as will be noted later in this decision. 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. 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 may be verified by information already on file with DHS or MWA. 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 Department has met their burden of proof in showing that neither claimant, nor claimant's husband was meeting their participation requirements with the JET program. The Department has shown, through numerous exhibits, including job logs, hour logs, and time sheets that claimant and her husband were frequently tardy to JET classes, had a number of absences, and were not meeting their combined hour requirements for several weeks before a triage was requested.

Furthermore, contrary to claimant's arguments, the Administrative Law Judge does not believe that the claimants were unaware or confused as to their requirements. While the Department did not help their credibility in the matter by giving unclear testimony on claimant's hour requirements, claimant's FSSP did show what types of hours claimant would be expected to perform in the JET program. Furthermore, the MIS case notes submitted by the Department shows that the claimants were warned several times as to what their hour requirements were. The undersigned is unsympathetic to the argument that the claimants were unaware of their responsibilities. At the very least, the claimants should have known the requirements, and any lack of knowledge upon their part was not the fault of the Department.

That being said, the undersigned believes that the claimant, while clearly not meeting her hour requirements, had good cause for not doing so.

Both the evidence of record, and the claimant's own testimony, illustrated that claimant had been having some issues with her pregnancy during the time in question. Medical notes in the file indicate that claimant frequently visited the doctor. Furthermore, claimant's children also had some illness issues during the time in question. While this evidence does not directly address all the issues—claimant's frequent tardiness, for instance—the undersigned believes that the illness and complications that occurred in the case could have reasonably been the cause of the issues claimant had with participating. This is not to say that all the physical evidence accounts for every day missed; however, the undersigned is willing to give claimant the benefit of the doubt. Claimant's testimony was generally credible, and it does not take a stretch of the imagination that claimant's medical problems were the direct cause of her participation problems.

Furthermore, this information was verified as required by BEM 233A; all medical records used in making this determination was contained in the Department's own hearing packet and was on hand during the triage. Furthermore, the MIS case notes in the case show that claimant had repeatedly informed the Department that she was ill, and provided doctor notes to the JET workers.

For these reasons, the undersigned holds that claimant herself had good cause, and as such, should not have been sanctioned or penalized.

Unfortunately, there are two issues of noncompliance that must be discussed—claimant's husband's non-participation is also at issue.

While the claimant may have had good cause for herself, the evidence of record indicates that claimant's husband can make no such claim.

While claimant's husband may not have had a driver's license, records show that the Department did provide transportation to the family. Claimant's husband was also frequently tardy to JET, and was not completing the hour requirements. However, unlike claimant, claimant's husband is not able to claim illness as a reason for his participation problems. The majority of claimant's husband's participation activities came from adult education classes, and as stated above, the undersigned does not find credible his allegation that he was unaware of the JET requirements. Briefly stated, claimant's husband has provided no real reason to award good cause, and the undersigned shall decline to do so here.

The undersigned is aware and sympathetic with the problems facing claimant's husband. Unfortunately, his wish to move to a different county cannot excuse his failure to search for a job in the local area. As such, the undersigned cannot award good cause to the claimant's husband, and thus, a penalty and sanction is appropriate.

This does not mean that a sanction is appropriate for the entire case, however. Given that claimant did have good cause, claimant's case is only facing one sanction. Claimants who are facing their first issue of noncompliance are eligible for the DHS-754 second chance procedures. BEM 233A states 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..."
11. If the client does not agree with the department's decision of noncompliance without good cause, use the second check box on the DHS-754 that advises the client not to sign the form. Assist the client with filing a hearing request and advise them that if they lose the hearing, they will receive a new notice of noncompliance and a new meeting date and they have the right to agree to the activities outlined on the DHS-754 and avoid the financial penalty at that time unless another group member uses the family's first excuse before the hearing issue is settled...This policy only applies for the first case of noncompliance on or after April 1, 2007..."

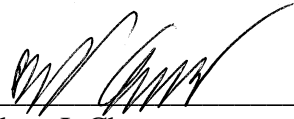
As this is claimant's first case of noncompliance, claimant should be eligible for the above procedure, and the Department must offer it to her.

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 and April 2009. The Department was incorrect when it denied good cause for the claimant. Claimant's husband did not have good cause for his failure to attend during the same time period, and the Department was correct when it denied good cause to him.

Accordingly, the Department's decision in the above stated matter is, hereby, **AFFIRMED IN PART, and REVERSED IN PART.**

The Department is ORDERED to offer the claimant a DHS-754, First Noncompliance Letter, in order to allow the claimant a chance to escape sanction. Only one penalty shall be added to the case, and, should claimant sign the DHS-754, benefits shall be restored retroactively to date of negative action, and claimants shall be reassigned to all appropriate JET classes.



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

Date Signed: 03/01/10

Date Mailed: 03/05/10

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/dj

cc:

