

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: 2009-24585

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 9, 2009

Clare 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 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 an FIP recipient in Clare County.
- (2) On 4-13-09, claimant was assigned to triage by JET for a failure to meet participation requirements.
- (3) On 4-13-09, claimant was sent a DHS-2444, Notice of Non-Compliance.

- (4) The notice scheduled a triage for 4-23-09 at 3:15 pm.
- (5) Claimant attended the triage.
- (6) Claimant was allegedly not awarded good cause at the triage.
- (7) However, no DHS-71 was filed, and it cannot be determined if a good cause determination was ever made.
- (8) Claimant's case was sanctioned and a penalty applied; however, this action was deleted pending the outcome of the hearing.
- (9) This is claimant's second alleged incident of noncompliance.
- (10) On 5-14-09, 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 “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...” 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 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.

In the current case, the Department's procedures towards overcoming claimant's alleged noncompliance were inadequate. While there are legitimate questions as to whether the claimant 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. The Department has presented no evidence that a good cause determination was ever made. Good Cause is recorded on a DHS-71, Good Cause Determination form. There was no DHS-71 in the file, and the Department was unable to produce one at hearing. Therefore, the undersigned must conclude that the Department has not met its burden of proof in showing that it followed its own regulations in sanctioning the claimant. PEM 233A requires a DHS-71 form to be filled out. This was not done, and therefore, the Department is 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. The Department will be required to correct this procedural error, and reschedule the triage. The Department may decide at this new triage that the claimant had good cause at the time of the non-participation, and, should it do so, claimant should be sent back to JET.

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, if the case was not reopened pending the hearing decision. 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: 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

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