

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: 2009-24785

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 15, 2009

Barry 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 15, 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 Barry County.

(2) On 5-15-09, DHS was notified that claimant was not meeting participation requirements with the JET program.

(3) On 5-18-09, claimant was sent a DHS-2444, Notice of Non-Compliance, which scheduled a triage for 5-21-09 at 1 pm.

(4) Claimant did not attend triage, allegedly because her mail was being stolen.

(5) Claimant's FIP case was closed in a response to claimant's missed triage appointment.

(6) All pertinent case notes, including the hearing summary and a handwritten note on the DHS-2444, read "No show."

(7) Claimant's case was sanctioned and closed.

(8) This is claimant's first incident of noncompliance; however, because claimant did not attend the triage, no DHS-754 was offered.

(9) On 5-29-09, 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 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 p. 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. The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused. BEM 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.** 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's procedures towards overcoming claimant's alleged noncompliance were inadequate. While there are legitimate questions as to whether the claimant could have attended the triage, or whether the claimant even had good cause, or whether the claimant was noncompliant, as claimant argued, these questions are, ultimately, irrelevant. The only relevant fact is that BEM 233A requires the Department to make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. Department Exhibit 1, the Hearing Summary, states that the noncompliance was assessed because claimant was a no call/no show to the triage. No mention of an independent good cause determination is made. Department Exhibit 3, the Notice of Noncompliance states that the claimant did not show up for the triage—there is no mention of an actual good cause determination anywhere in the hearing record. The Department testified that no good cause was determined because claimant did not show up for triage. Therefore, as no independent evidence has been offered to show that a good cause determination was made beyond noting that claimant did not show up for the triage, and that all evidence in the file shows that the reason for the noncompliance assessment was because claimant did not show up for the triage, the undersigned must hold that the Department did not make an individual assessment. This is plain error.

DHS is required to hold the triage without the client, and discuss and consider all factors that are known about the client that may have contributed to good cause. A good cause determination must then be made, using these known factors. BEM 233A, p. 9. The available evidence shows that this determination was not made, and implies that the triage was not held, thus placing the Department in error.

On a related note, it should be stated that even if the Department's triage procedures were proper, the undersigned would still hold that the claimant received improper notice of the triage. Claimant testified credibly that she did not receive notice of the triage because her mail was being stolen. Claimant presented evidence of harassment that lent weight to that allegation. Therefore, the undersigned would hold that it was more likely than not that the claimant did not receive notice of the triage, and therefore, the Department must reschedule it.

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.

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. 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 BRIDGES Eligibility and BRIDGES Administrative Manuals for a first or 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

cc:

