

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: 2009-25669

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 21, 2009

Lenawee 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 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 Lenawee County.
- (2) On 4-30-09, claimant was assigned to triage by JET for a failure to meet participation requirements.

(3) On 5-13-09, claimant was referred back to JET after the triage, and given until 5-18-09 to supply JET with missing documentation that was apparently the cause of the triage referral.

(4) JET caseworker notes from this case show that the caseworker was “not happy w/this”.

(5) Claimant supplied the missing documents on 5-18-09, and therefore passed the requirements of the first triage. It is then assumed that claimant was either deemed to have good cause, or was found to never have been non-participatory in the first place.

(6) On 5-19-09, JET referred claimant back to triage because claimant had not been to JET since 5-1-09.

(7) This was the time period upon which claimant was in the first triage process.

(8) The caseworker who referred claimant to the second triage was also the caseworker who was “not happy” with the first triage decision.

(9) On 5-20-09, claimant was sent a DHS-2444, Notice of Noncompliance, which gave a triage date of 5-27-09.

(10) Claimant did not attend triage.

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

(12) A DHS-71 was filed; the reason given for no good cause read: “No call/No show.”

(13) Claimant’s case was sanctioned and closed on 6-2-09.

(14) This sanction was marked as claimant's second. However, it should be noted, that claimant complied with the requirements of the first triage, and therefore, that sanction and penalty should have been deleted.

(15) On 6-1-09, claimant filed a request for hearing, alleging that he 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...” PEM 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 without good cause 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.

As to date, no evidence has been presented that claimant was ever non-participatory in the first place.

Claimant was assigned to triage originally on 4-30-09. When claimants are assigned to triage, both the regulations, and common practice show that the claimant is temporarily removed

from the JET program pending the outcome of the triage. PEM 233A states that if good cause is awarded, claimant is “sent back to JET”. The MIS case notes refer to this action as “assigned to triage”. This would imply that a claimant was not in JET at the time of the triage, which leads to the conclusion that a claimant in the triage process has been removed from the JET program.

Claimant’s first triage was on 5-13-09, and at that triage, he was given until 5-18-09 to present documents (no evidence of the nature of those documents was ever presented) to JET. According to the MIS case notes, Department Exhibit 6, claimant presented these documents on 5-18-09, as was required.

From here, the Administrative Law Judge would have assumed that either good cause would have been awarded, or that it would be determined that claimant was never non-participatory in the first place, and claimant would be returned to JET. This is not what happened. Instead, JET immediately referred claimant back to triage, for failing to attend a JET assignment during the time he was in triage—during which time he had been removed from the JET program.

The undersigned is at a loss to explain why this happened. There is nothing in policy that states the Department can penalize a claimant for not attending JET during a time period when he is suspended from the JET program. Given this, the fact that JET proceeded to re-suspend claimant, and the fact that DHS went along with this suspension, is, quite frankly, baffling. The only clue to this action is that the claimant’s JET caseworker wrote in the MIS case notes that she was “not happy” with the original DHS triage result, which lends credence to a theory that JET was unhappy with the DHS decision and was looking for a reason to remove claimant from the program. The undersigned hopes fervently that this is not the case.

The Administrative Law Judge realizes that this second suspension was in relation to a phone call from the claimant’s Work Experience Activity location—an activity assigned by

JET—that he hadn't shown up since he was suspended. However, the undersigned can only note that there is nothing in the policy that requires a suspended claimant to continue with JET activities once a claimant has been removed from the program, and this has not been the custom of DHS to require this of a claimant. Given all of this, the undersigned feels that it was quite reasonable that a claimant would not attend a WEP activity. There was no reason for this to have continued as long as it did. If the WEP site was unaware that claimant had been suspended from the JET program, the fault lies with JET for not notifying the site, not the claimant for not going to an activity in a program he had been suspended from.

The fact that claimant did not attend the triage was, therefore, irrelevant. Claimant should never have been assigned to triage in the first place.

The undersigned also notes that this had been marked as the claimant's second penalty. No evidence was presented that claimant had undergone a DHS-754 process to re-enter the JET program. According to the original triage notes, claimant was given until 5-18-09 to furnish missing documents to the JET program. Claimant did this. Therefore, claimant was either awarded good cause (which would have resulted in the pending penalty being removed from his case) or was deemed participatory (which also would have resulted in his penalty being removed.) Therefore, the undersigned will hold that there should be no penalties on claimant's case; the first penalty should have been removed and the second penalty should have never been assessed.

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 deemed claimant non-participatory.

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

The Department is ORDERED to reschedule/reopen claimant's case retroactive to the date of case closure, and remove any and all negative actions and penalties on claimant's case. The Department is further ORDERED to reschedule claimant for any appropriate JET classes.

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

Date Signed: September 2, 2009


Date Mailed: September 3, 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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