

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg No: 2009-25994

Issue No: 1021

Case No: ██████████

Load No: ██████████

Hearing Date:

July 20, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on July 20, 2009. The Claimant appeared and testified. Karen Brenner, FIM, Bonita Duncan, FIS appeared on behalf of the Department.

ISSUE

Whether the Department properly issued a negative action effective 2/9/09 on Claimant's FIP case for a failure to attend Work First?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant is an active FIP recipient and was referred to Work First.
2. Claimant testified that she missed some days of Work First due to health issues, but that she presented a doctor's note every time.

3. On 2/9/09, a Notice of Noncompliance was issued indicating that on 1/21/09, Claimant failed to participate with Work First Activities. (Exhibit 1, p. 1).
4. There was no one from JET available to testify at the hearing and the Department was unable to identify why Claimant was noncompliant.
5. The JET Coordinator notes indicate that Claimant was informed to return back to Work First on 1/22/09. On 2/4/09, the JET Coordinator scheduled a triage.
6. The Department indicated that a Medical Needs form was sent to the Claimant's doctor on 12/8/08 prior to her beginning JET and that the doctor did not restrict Claimant from working at that time.
7. Upon review of the Medical Needs Form, the doctor indicated that Claimant could work but with limitations due to chronic ongoing illness. (Exhibit 1, p. 2).
8. Claimant submitted into evidence a note from [REDACTED] at the [REDACTED] dated [REDACTED] which states, "Ms. Cheryl Jacobs has been unable to work due to abdominal pain and depression." (Exhibit 2, p. 5)
9. Claimant submitted into evidence a doctor's note from [REDACTED] indicating that Claimant was under doctor's care and totally incapacitated on [REDACTED] due to Uterine Fibroid. (Exhibit 2, p. 7). This is supported by an ultrasound of the abdomen showing the fibroid. (Exhibit 2, pp. 8-9).
10. Claimant also submitted into evidence a doctor's note from [REDACTED] indicating that she was seen for Outpatient Physical Therapy on [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. (Exhibit 2, p. 6).
11. Claimant testified that she never received the Notice of Noncompliance. Claimant also testified that her address remained the same.

12. A triage was scheduled for 2/19/09. Claimant did not attend. No good cause was found due to no show at triage. (Exhibit 1, p. 2).
13. Per the hearing summary, Claimant was notified of the negative action on March 27, 2009 and it went into effect on 4/8/09. (Exhibit 3).
14. On May 28, 2009, the Department received the Claimant's written hearing request.
15. Claimant is still receiving FIP benefits.

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 (formerly known as the Family Independence Agency) 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).

Federal and State laws require each work eligible individual in a FIP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. PEM 230A. All work eligible individuals who fail, without good cause, to participate in employment or self-sufficiency-related activities will be penalized. PEM 233A. Failure to appear at a JET program results in noncompliance. Id.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. PEM 233A at 4. Good cause includes being physically or mentally unfit for the job or activity as shown by medical evidence or other reliable information. Id. It also includes where the client

has a debilitating illness or injury. The penalty for noncompliance without good cause is FIP closure. Id. at 6. If good cause is established the negative action is to be deleted. Id. at 12.

In this case, the Claimant testified that she did not receive the hearing notice. However, the proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). There was no evidence presented to rebus this presumption other than Claimant's testimony. Therefore, it is assumed that Claimant received the notice. Claimant does have a doctor note indicating that she was unable to work due to abdominal pain and depression dated [REDACTED] – the day after the triage. The Administrative Law Judge finds that this constitutes good cause for missing the triage meeting.

Furthermore, the undersigned finds that Claimant had good cause for missing Work First in January and February, 2009 as she was physically and mentally unfit for JET activities based on the following evidence:

1. In [REDACTED], Claimant's physician indicated that Claimant had a chronic ongoing illness for which she would only be able to work with limitations. (Exhibit 2, p. 2).
2. Claimant was treating for uterine fibroids and depression. (Exhibit 2, p. 5, pp. 8-9).
3. Claimant testified that she is taking Paxil for her depression.
4. Claimant was in physical therapy twice a week. (Exhibit 2, p. 6).

Based upon the foregoing facts and relevant law, it is found that the Claimant had good cause to miss both Work First and the scheduled triage. Accordingly, the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department's determination is not upheld.

Accordingly, it is ORDERED:

1. The Department's negative action for noncompliance, effective 4/8/09, shall be deleted.
2. The Department shall reopen Plaintiff's case from the date of closure and supplement the Claimant with any lost benefits she was otherwise entitled to receive.

/s/ _____
Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/19/09

Date Mailed: 08/19/09

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.

JV/dj

cc:

