

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: 200930351
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 18, 2009
Monroe 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 August 18, 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 his wife were FIP recipients in Monroe County.
- (2) Claimant and his wife were participants in the JET program.
- (3) On June 9, 2009, JET notified claimant's caseworker that both claimant and claimant's wife had been non-participatory with JET program attendance.

- (4) On June 16, a DHS-2444, Notice of Noncompliance was sent to claimant scheduling a triage meeting for June 30, 2009.
- (5) Claimant had not been registered in the MIS system for JET classes.
- (6) While claimant did receive a JET appointment notice, claimant was told by JET that he was not in the system and, therefore, unable to be signed up for classes.
- (7) JET did not inform the claimant that he was to contact DHS to resolve the issue.
- (8) Claimant never started with JET classes.
- (9) Claimant had been on a medical deferral before the referral to JET.
- (10) Claimant's wife failed to attend JET on June 8, 2009 and failed to turn in job search logs for the dates of May 31, 2009 through June 6, 2009.
- (11) Claimant's wife was in the hospital on [REDACTED] 2009.
- (12) As evidence, claimant's wife attempted to submit, at the triage, a fax cover sheet from the hospital for that date.
- (13) The Department did not accept the cover sheet as proof of good cause or allow claimant time to get more acceptable proof.
- (14) Claimant's wife also submitted, at the triage, a doctor's excuse dated [REDACTED] 2009 which showed claimant's wife would soon be scheduled for surgery.
- (15) The Department decided that neither claimant nor her husband had acceptable good cause for their non-participation with JET.
- (16) 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 wife are each being considered for a separate incident of noncompliance, even though this stems from the same incident.

(17) On July 14, 2009, claimant requested a hearing.

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. 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 case notes, that claimant and his wife were missed JET classes and were not meeting their combined hour requirements before a triage was requested.

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

The evidence of record shows that claimant was not registered in the MIS system for JET participation. Claimant brought this issue up at hearing, as an explanation for what happened. Claimant testified that he called JET prior to his scheduled appointment date and was told that he was not in the system and was not required to attend. The Department acknowledged after this testimony that claimant was not registered in the system.

However, the Department also stated that they did not believe that anybody at JET would have told claimant that he did not have to attend without registration, and stated that they believed that claimant would have been told that he needed to call the Department directly to address the system error.

This may be the truth; however what should have happened is not the same as what actually happened. The Department was unable to provide any evidence or any testimony of a person with first-hand knowledge of the actual events. After long consideration, the undersigned finds the claimant's testimony truthful, especially given that the registration issue was brought up by the claimant before the undersigned or the Department was aware that there was a registration issue. As claimant was aware of the problem, the undersigned finds it likely that claimant was given erroneous information and is therefore not at fault for his failure to attend JET classes. Furthermore, given that claimant was coming off of a medical deferral and had an expectation (because he was still experiencing the same medical problems) of a continued medical deferral, the undersigned finds the claimant's expectation of not having to return to JET reasonable.

As such, the Department was in error when it levied a penalty against the claimant, given the mistakes in its own system that led to the failure to attend JET in the first place.

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

The Department alleged that claimant's wife failed to attend JET classes on June 8, 2009, and failed to turn in job logs for the period of May 31, 2009 through June 6, 2009. Claimant's wife admitted to the allegations, and thus the issue turns to whether claimant's wife had good cause for the absences in question.

At the triage, claimant's wife submitted several documents. The first document was a doctor's note dated [REDACTED], 2009, showing that claimant's wife had been in to the office on that day. While this note showed that claimant had some gall bladder problems, the fact that this letter was an excuse for a date three weeks after the precipitating incident makes the letter largely irrelevant for good cause purposes.

Claimant's wife also submitted a letter showing that she and her husband were in intensive family counseling for a time period starting [REDACTED] 2009. Again, while this letter would have been useful for good cause purposes, the counseling started after the precipitating incident, and is therefore also irrelevant.

Claimant's wife finally argued at triage that she had fallen on [REDACTED] 2009 and was admitted into the hospital on that same date. This emergency and the subsequent recovery and gall bladder diagnosis were the reason claimant did not attend JET or turn in the work logs. As proof of this illness, the claimant provided a fax cover sheet, from the hospital and dated [REDACTED] 2009, which was allegedly used to send in job logs from the week before so that they would not be late. Claimant testified that she sent in job logs in this manner because she tries to be careful in meeting JET requirements.

The Department testified that it did not accept this cover sheet as evidence because it was insufficient to prove that claimant had the illnesses and medical problems that she says she did.

While the undersigned agrees in theory with the Department, he will note that the sheet does show that claimant's wife was in the hospital on [REDACTED]. Furthermore, claimant's wife testified that she was unaware of the need to get medical records of that date in time for the triage; subsequent to the triage, claimant was not given more time to do so. While the cover sheet is certainly not dispositive evidence of good cause, at the very least it lent credence to claimant's wife's good cause allegation. While it was not sufficient to provide good cause at the time, the Department was in error when it did not allow claimant to secure the records to verify her claim. There was evidence presented at the triage that at least amounted to a strong suspicion that claimant's wife may have had good cause, and should have been given some time to secure that evidence. That she did not bring the evidence to the triage was a good faith mistake that could have been easily remedied.

The subsequent doctor's note showed that claimant did have some later medical problems that coincided with her alleged [REDACTED] 2009 hospital admittance, giving further proof to the claimant's wife's argument for good cause. Finally, the undersigned found claimant's wife's testimony to be credible.

As such, the Administrative Law Judge holds that claimant's wife had good cause for her failure to participate with JET and as such, should not have been penalized for her failure.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant and claimant's wife had good cause for their failure to attend the JET program during the month of June, 2009. The Department was incorrect when it denied good cause for the claimant and the claimant's wife.

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

The Department is ORDERED to reschedule claimant for all JET classes, if necessary. Benefits shall be restored retroactively to date of negative action, and all penalties resulting from this action shall be removed from claimant's case record.



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

Date Signed: 03/22/10

Date Mailed: 03/26/10

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:

