

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: 2009-32881
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 10, 2009
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an in-person hearing was held on November 10, 2009, in Saginaw County in Saginaw, Michigan. Claimant was represented at the administrative hearing by [REDACTED]

ISSUE

Did the Department of Human Services (DHS) properly propose to sanction claimant's Family Independence Program (FIP) on the grounds of noncompliance with the JET program?

FINDINGS OF FACT

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

- (1) The department had previously classified claimant as a mandatory JET participant.
- (2) Claimant had made a medical exemption claim in 2008. On 5/7/2008, MRT denied claimant's claim for the following claim. Exhibits 37, 38. The MRT form has MA and SDA

checked off. There is another box which is not checked off, but on the line next to the box is written "JET." There is no explanation on the form other than to indicate that claimant fails to meet Section 2, MA disabled/blind and SDA. Under SDA, it states: "PEM Item 261."

(3) The evidentiary packet at the administrative hearing consisted of over 44 exhibits. None of these exhibits showed the medical evidence in existence at the time of the 5/7/08 MRT decision and/or supporting department documents to indicate which impairments MRT reviewed.

(4) Claimant was re-referred to JET in January, 2009. Claimant requested a medical deferral at that time. The hearing summary indicates that the department denied her referral and scheduled her to attend.

(5) Medical evidence in the evidentiary file, which is new and subsequent to the MRT denial, includes exhibits 10, 25, 26, 27, 28, 29, 30, 21, 22. All these documents are medical evidence dated after 5/7/2008.

(6) On 1/15/2009, the DHS issued a verification checklist to claimant informing her that she needed to have an attached DHS-518 completed. Claimant was informed verbally that this was necessary for her to provide sufficient evidence to support her claim of a medical deferral.

(7) Claimant delivered the form on 3/16/2009. The form is dated 1/15/2009.
Exhibit 20.

(8) The department testified that the form was inadequate as it did not contain supporting medical documentation. No where on the form does it indicate that claimant was required to submit attached medical documentation. The verification checklist is does not indicate to claimant that it is necessary for her to attach medical documentation.

(9) The hearing summary leaves the date that claimant was notified of the department action blank. On March 3, 2009, the DHS issued a DHS-1605 informing claimant that effective

3/17/09 her FIP grant will be cancelled because she or a group member failed to participate with self-sufficiency-related activities.

(10) Claimant filed a timely hearing request on 3/12/09. The action was reinstated pending the outcome of the 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Applicable policy and procedure to the case herein is found in numerous items, but primarily in BEM Items 230A and B, and 233A and B. Also applicable is the MRT denial form which states that BEM Item 261 is applicable. Moreover, the definition for the MA/disabled/blind on the MRT denial form is the federal definition of federal disability. See Exhibit 37. The top of the MRT denial has the MA box checked off as well as the SDA box. See Exhibit 37.

Other general verification policy and procedure applicable to the case herein has to do with the duties of the DHS as well as the claimant in cooperating with the department. Specifically, this policy is quite clear in stating that the department must clearly instruct individuals when requesting information of what is necessary and when it is due. Individuals who are recipients of federal benefits also have a clear duty to clearly inform the department and respond to requests regarding information and verification.

Verification policy and procedure states in part:

DEPARTMENT POLICY

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- . Determine eligibility.
- . Calculate the level of benefits.
- . Protect client rights. PAM, Item 105, p. 1.

All Programs

Clients must completely and truthfully answer all questions on forms and in interviews. PAM, Item 105, p. 5.

The client might be unable to answer a question about himself or another person whose circumstances must be known. Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. PAM, Item 105, p. 5.

Responsibility to Report Changes

All Programs

This section applies to all groups **except** most FAP groups with earnings.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes must be reported **within 10 days**:

- . after the client is aware of them, or
- . the start date of employment. PAM, Item 105, p. 7.

Verifications

All Programs

Clients must take actions within their ability to obtain verifications. DHS staff must assist when necessary. See PAM 130 and PEM 702. PAM, Item 105, p. 8.

Assisting the Client

All Programs

The local office must assist clients who ask for help in completing forms (including the DCH-0733-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English. PAM, Item 105, p. 9.

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date (see “**Timeliness Standards**” in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed and the client has not made a reasonable effort to provide it. PAM, Item 130, p. 4.

MA Only

Send a negative action notice when:

- . the client indicates refusal to provide a verification, **or**
- . the time period given has elapsed. PAM, Item 130, p. 4.

FAP Only

Do **not** deny eligibility due to failure by a person **outside** the group to cooperate with a verification request. In applying this policy, a person is considered a group member if residing with the group and is disqualified: See “**Disqualified Persons**” in PEM Item 212. PAM, Item 105, p. 5. 7 CFR 273.1.

VERIFICATION AND COLLATERAL CONTACTS

DEPARTMENT POLICY

All Programs

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- . required by policy. PEM items specify which factors and under what circumstances verification is required.
- . required as a local office option. The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for MA, TMA-Plus or AMP without prior approval from central office.
- . information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party. PAM, Item 130, p. 1.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. PAM, Item 130, p. 1.

The client must obtain required verification, but you must assist if they need and request help. PAM, Item 130, p. 2.

ELIGIBILITY DECISIONS

Denials

All Programs

If the group is ineligible **or** refuses to cooperate in the application process, send a denial notice within the standard of promptness. PAM, Item 115, p. 15.

Applicable to the case herein, policy is found in PEM, Item 230A:

Employment and/or Self-Sufficient-Related Activities

FIP/RAP/Cash

MRT Decision: Take action below that pertains to the decision rendered by the MRT.

... When a MRT decision has been completed and the client states they have additional medical evidence or a new condition, gather new verification and send for an updated MRT decision.

If the client comes in with a doctor's note after the MRT decision and does not have new medical evidence or a new condition, send the DHS 518 to the client's doctor and request supporting medical evidence. If new medical evidence is not provided, do not send the

case back to the MRT. The previous MRT decision on the client stands. BEM Item 230A, p. 15.

It should be noted at the onset that the department's chronology of events in this case was very unclear. For the first half of the administrative hearing, the department jumped between different dates, MRT decision, and medical evidence. Some of this was understandable in that the medical evidence had been submitted on different occasions. However, it became quite clear as the hearing went on, that all the medical evidence is from after the 5/7/2008 MRT decision.

In this case, the department issued a 518 to claimant. This is somewhat contrary to policy in that the policy instructs the department to issue the 518 to the client's doctor. See BEM, Item 230A, p. 15. In fact, policy instructs the department to instruct the doctor to attach supporting medical evidence.

In this case, the department did not send the 518 to claimant's doctor, but in fact sent it to claimant. No where in this file is there evidence that the department instructed claimant to ask the doctor to accompany the 518 with supporting medical evidence. The department has failed to follow general verification policy and procedure. Moreover, the department did not follow its policy in sending the 518 directly to the client's doctor. Once again, it is noted, that all the medical evidence in this case is dated after the MRT decision of 5/7/2008. This trier-of-fact in the record simply does not reflect the condition(s) upon which MRT denied initially on 5/7/2008 and fails to make a distinction between any alleged impairment(s) prior to or after the 5/7/2008 MRT decision. Under the above-cited policy and procedure, claimant is entitled to have the MRT reassess her new medical documentation and make another decision. BEM, Item 230, p. 15.

It is also noted under general verification policy and procedure, that the department failed to give claimant sufficient time at triage to obtain any new additional medical documentation. Unrefuted evidence on the record is that on 3/17/09 the department gave claimant two days--until 3/19/09 to submit any medical documentation. Claimant had a doctor's appointment within the

two days. The general rule is that the department is to give an individual 10 days to comply with any verification requests.

It should be noted that even if claimant had some of the same impairments in the pre- and post-MRT decision, claimant had a hysterectomy after the MRT decision which clearly was a different medical situation than that which existed prior to the MRT decision of 5/7/2008.

It is noted also that counsel objected to the fact that once the 518 was received by the local office, the local office should have on its own accord asked the physician for additional medical documentation, which it failed to do. The department's actions are reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department failed to follow its policy and procedure,

Accordingly, the department's proposed sanction of claimant's FIP case is hereby REVERSED.

The department is ORDERED to collect the new medical documentation subsequent to the 5/7/2008 MRT denial and reissue the new medical documents to the MRT for an assessment as to a JET deferral.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 24, 2009

Date Mailed: November 25, 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.

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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 mailing date of the rehearing decision.

JS/cv

cc:

