

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: 2009-35308
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 7, 2009
Wayne 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 October 7, 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 applicant in Wayne County.
- (2) Claimant was scheduled to attend JET orientation on August 10, 2009.
- (3) Claimant did not attend JET orientation on that day.

- (4) On July 30, 2009, DHS sent the claimant a DHS-4785, JET Appointment Notice, which stated that the orientation would be held at [REDACTED], Detroit, MI 48224.
- (5) The orientation was to begin at 1:00pm.
- (6) Claimant arrived on time for the appointment, but was told that the orientation was being held in a different building that day.
- (7) Claimant was told by the JET caseworkers on staff that because it would take several minutes to walk to the new building, she would not be allowed in.
- (8) By the time claimant finished talking with the workers on staff, the time was 1:03pm.
- (9) Claimant left the orientation and immediately called her caseworker.
- (10) Claimant's caseworker did not return this phone call, and claimant went into DHS the following day to speak with her caseworker.
- (11) Claimant was told by her caseworker that he would look into the situation.
- (12) During this meeting, claimant specifically asked to be given another orientation date.
- (13) Claimant's last date to attend orientation was August 20, 2009.
- (14) Orientations are held every Monday at the JET worksite.
- (15) The date of the next orientation subsequent to claimant's original date was August 17, 2009, 3 days before her last date to attend orientation.
- (16) Claimant was never given another orientation date, nor was she notified that she could attend the August 17 date and incur no penalty.
- (17) Claimant attempted to call the Department several times throughout the month for updates as to her case disposition, but was not told anything.

- (18) On August 31, 2009, three weeks after claimant first contacted DHS explaining the situation, claimant was notified that it was too late to reschedule her for orientation, and her application would be denied for a failure to attend orientation.
- (19) On September 1, 2009, claimant requested a hearing, arguing that she had gone to JET as required, and should have been rescheduled for orientation.

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. Clients who have not been granted a deferral 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 pg. 1.

However, non-participation 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 non-participatory person. BEM 233A. A claim of good cause must be verified and documented.

The penalty for noncompliance is FIP closure. 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. BEM 233A. 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.

However, a triage is not required if the claimant is currently in the application process, and at least one reading of the regulations would allow the Department to deny an FIP application for any instance of non-participation—with or without good cause—when that application is still pending. While there is an argument to be made (given the stated definition of noncompliance) that a good cause determination is required by implication, such arguments are not required in the current case. BEM 233A states that noncompliance at application will result in a denial of the claimant’s application, and that a good cause determination is not necessary; however, this means that there be actual non-participation, i.e. a claimant refusing to participate in work related activities, good cause notwithstanding. The undersigned does not believe that the claimant ever refused to participate in work related activities, and any problems the claimant had with attending JET orientation were directly attributable to the actions of the Department and the

JET agency. This finding renders the necessity of a good cause finding moot, as good cause is not at issue. The issue is not whether the claimant had good cause for her failure to participate; the issue is whether the claimant failed to participate. The Administrative Law Judge holds that claimant participated to the best of her ability and was only prevented from attending orientation by the Department and the JET agency.

On July 30, 2009, the Department sent claimant a JET appointment notice stating that claimant was to go to [REDACTED] in Detroit, MI for her orientation. Claimant was never notified that this location had changed. According to Department testimony, JET never informed the Department that they had changed location; the location change was temporary, for that day only, and JET felt no need to inform the Department of the change.

According to claimant's testimony, she arrived at the building at 1pm, and was told that the location had changed to a new location at least 3 blocks away. Claimant was told by the JET staff members still at this building that the location had changed, but claimant would not be able to walk to the new building in time for the class. Claimant was told that she would arrive at the new building too late for class, and would not be let in. Claimant testified quite credibly that she looked at her watch after talking with these staff members and thus remembered that the time was then 1:03pm. This is relevant because it shows that claimant had most likely arrived by 1pm at the original building. Claimant also testified that she was told that the orientation instructor had led the class attendees to the new building some time prior to claimant's arrival. Given the times and distances involved, the undersigned can only conclude that the instructor had to have led the class to the new building well before 1pm.

Thus, even though claimant had arrived in time for the class, she was told she would not be let in to the class, because the class had changed locations without notice.

Therefore, claimant did not fail to attend orientation; JET and the Department failed to notify claimant of the new class location. Claimant cannot be faulted for this failure of the Department. At no time did claimant fail to participate; claimant did everything she was asked. She showed up at the location the Department asked her to, and did so at the correct time. The change of buildings was not within the claimant's control, and her failure to show up at this building, when she was not given knowledge of this building, is not a failure to participate. Rather, it is a failure of the Department and JET to provide claimant with the correct information.

Furthermore, claimant's subsequent actions, as testified to by the claimant and not-rebutted by the Department, establish that claimant attempted to the best of her abilities to participate.

Claimant testified that she called the Department immediately to inform them of what had happened. The Department did not return her phone call, and claimant was not able to get in touch with her caseworker until the next day. Claimant was only able to get in touch with her caseworker because claimant personally went to her local DHS branch. When there, claimant asked for another orientation date, and was told by her caseworker that he would investigate the matter with JET. Unfortunately, claimant's caseworker did not return her phone calls subsequent to this meeting, and claimant was finally notified on August 31, 2009, three weeks after her initial meeting, that there was nothing the Department could do and that her FIP application would be denied because claimant failed to attend orientation. The Department testified that this long period between the initial meeting and decision was because JET failed to return the Department's phone calls. While the Administrative Law Judge finds this testimony sadly credible, it is also irrelevant to the case at hand, as this long delay materially harmed the claimant and the Department had other options with regard to rescheduling the claimant's orientation.

Department Exhibit 2, claimant's DHS participant history, shows that the claimant was given until August 20, 2009 to attend orientation. This is commonly called the "last date to attend orientation". While claimant was only given an appointment on August 10, another orientation was held on August 17, 2009, three days before claimant's last date to attend orientation. Most Department branches, when sending out orientation dates to FIP applicants, commonly give applicants the choice of attending orientation on either of the two dates that fall before the last date to attend orientation. Likewise, the Department could have simply told claimant to attend the August 17 date as well.

The Department argued that they were not required to give the claimant a second date; any instance of noncompliance, according to PEM 233A results in group ineligibility, and they were not required to make a good cause determination.

The undersigned is unsympathetic to this argument; the Department presupposes that the claimant had been noncompliant and that good cause was a factor. Good cause is a factor beyond the claimant's control that excuses non-participation. As stated above, claimant participated. She showed up at the correct location at the correct time. It was JET, and by proxy the Department, who failed to participate with claimant by changing the orientation location without prior notice. Good cause could not be awarded because there was no failure to participate to award good cause to. Therefore, this clause of PEM 233A is irrelevant to the current case; claimant was not noncompliant, and should have been given another orientation date.

Furthermore, even if the undersigned were to accept the argument that the Department was unaware that the location had changed, and that the Department was unaware that the claimant had not failed to participate, because JET refused to return the Department's phone calls, the undersigned fails to see exactly how this should be the claimant's problem. The heart

of the matter would not change—claimant was where she was supposed to be at the correct time, and participated with the assigned activities to the best of her ability. The fact that the Department found this out after the last date to attend orientation had passed was not the fault of the claimant. It was the fault of JET, and by proxy, the Department. Claimant cannot be punished for the failures of the Department to return its own phone calls.

For the reasons stated above, the undersigned can only conclude that the claimant did not fail to participate with her assigned work-related activities. The fact that claimant did not attend orientation was not the fault of the claimant, but rather, the Department for changing the location of the orientation without notice. Furthermore, the Department could have rescheduled claimant for orientation, and failed to do so in error. Any delay resulting in the last date to attend orientation date passing was the fault of the Department. Therefore, the Department's decision to deny claimant's FIP application for noncompliance was in error.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was in compliance with the JET program during the month of August, 2009, as she was never notified of any location change, and arrived for orientation at the correct location and time. At no point did claimant refuse to participate with assigned work-related activities.

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

The Department is ORDERED to process claimant's FIP application retroactively to the date of application. Should claimant be found otherwise eligible for FIP, claimant is to be awarded FIP benefits retroactive to the date of application. Furthermore, any other benefits tangential to the FIP program, for which claimant would have otherwise been eligible by virtue

of her protected FIP application filing date, shall be awarded to the claimant should she meet all other eligibility factors.



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

Date Signed: 11/16/09

Date Mailed: 11/23/09

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.

RJC/dj

cc:

