

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: 20101280
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 10, 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 December 10, 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 was a FIP recipient in Wayne County.
- (2) On April 2, 2009, DHS was notified that claimant was not meeting participation requirements with the JET program, and a triage was requested.
- (3) On June 16, 2009, after no response from DHS, claimant was once again submitted for a triage.

- (4) On August 21, 2009, claimant was once more submitted for a triage.
- (5) On September 1, 2009, after 5 months of no response from DHS, claimant was once more resubmitted for a triage.
- (6) On September 18, 2009, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for September 24, 2009 at 3:00pm.
- (7) Claimant did not attend the triage.
- (8) Claimant's FIP case was closed in a response to claimant's missed triage appointment.
- (9) DHS's triage notes read, in pertinent part, "No Show/FIP will close."
- (10) There is no evidence a triage was actually held.
- (11) Claimant's case was sanctioned and closed.
- (12) This is claimant's first incident of noncompliance; however, because claimant did not attend the triage, no DHS-754 was offered.
- (13) On September 28, 2009, claimant filed a request for 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).

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 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 “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 p. 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. The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused. BEM 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.** 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's procedures towards overcoming claimant's alleged noncompliance were inadequate. While there are legitimate questions as to whether the claimant could have attended the triage, or whether the claimant even had good cause, or whether the claimant was noncompliant, as claimant argued, these questions are, ultimately, irrelevant. The only relevant fact is that BEM 233A requires the Department to make a good cause determination, even if the claimant does not show up for the triage. The Department has presented no evidence that a good cause determination was ever made. Department Exhibit 1, the Hearing Summary, states that the case went into negative action when the claimant "didn't show for the triage". No mention of an independent good cause determination is made. Department Exhibit 3, the triage notes, read "No Show/FIP will close", and does not state that an independent good cause determination was made. The Department testified that no good cause was determined because claimant did not show up for triage. This is far from harmless error; Department Exhibit 4, the MIS case notes, show that claimant's children had been ill in the days leading up to her non-participation, and it is possible that the Department could have determined, though admittedly unlikely, that good cause could apply. Regardless of potential outcomes, BEM 233A is quite clear; a triage must be held even if the client is absent, and at a triage that the claimant does not attend, the Department

must use all available information to render a good cause determination; there is no evidence that the Department used this information, and therefore was in error.

Therefore, as no independent evidence has been offered to show that a good cause determination was made beyond noting that claimant did not show up for the triage, and that all evidence in the file shows that the reason for the noncompliance assessment was because claimant did not show up for the triage, the undersigned must hold that the Department did not make an individual assessment. This is plain error, and the triage must be rescheduled so that the Department may make a good cause determination. If the Department does not award good cause, claimant must be provided with a DHS-754, as outlined in BEM 233A, as this is claimant's first incident of noncompliance.


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 failed to make a good cause determination.

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

The Department is ORDERED to reschedule a triage for the claimant, and reopen claimant's case retroactive to the date of case closure. The Department is further ORDERED to institute any appropriate triage and post-triage procedures, including a good cause determination and a consideration of whether claimant was noncompliant in the first place, as is consistent with the BRIDGES Eligibility and BRIDGES Administrative Manuals for a first or second incident of non-compliance. Should good cause not be found, the Department is ORDERED to provide

claimant with a DHS-754, as is consistent with BRIDGES Eligibility Manual 233A.



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

Date Signed: 01/21/10

Date Mailed: 01/22/10

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:

