

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: 201012881
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 18, 2010
Macomb 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 March 18, 2010.

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 a FIP recipient in Macomb County.
- (2) Claimant was required to attend JET classes in October, 2009.

- (3) The Department received notification on November 3, 2009 that claimant had not attended required classes during that month and had failed to return required job logs for the days of October 26 and October 27, 2009.
- (4) These job logs were due on October 28, 2009.
- (5) Claimant turned in the logs on October 28, 2009.
- (6) Claimant had already been referred to triage on October 27, 2009.
- (7) Claimant kept, in a planner, very specific and regular notes regarding her activities at JET.
- (8) These notes show that claimant had been referred to triage before her job logs were due.
- (9) A triage was held on November 18, 2009.
- (10) Claimant attended the triage.
- (11) The reason for the triage was primarily based on claimant's failure to submit job logs for October 26 and October 27, 2009.
- (12) Claimant was not given good cause at the triage.
- (13) Claimant was deemed noncompliant with the JET program and her case was sanctioned for three months.
- (14) This is claimant's second incident of noncompliance.
- (15) On December 7, 2009, claimant requested a hearing, stating that she had met all requirements of the JET program.

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.

After reviewing the facts of the case, the undersigned does not believe that the claimant ever refused to participate in work related activities, and was therefore never non-participatory. This finding renders the necessity of a good cause finding moot, as good cause is not at issue.

Any finding of the Department that the claimant did not have good cause is thus irrelevant, because no good cause finding was necessary, even though the Department's triage procedures were appropriate and correct.

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.

The Department received notification on November 3, 2009 that claimant had missed one required JET class, and failed to turn in job logs for October 26 and October 27, 2009.

The job logs for the dates of October 26 and October 27 were due on October 28, 2009. It was the alleged failure to turn in these job logs that caused JET to deem claimant non-participatory and refer her to triage. However, the evidence of record shows that claimant did not fail to turn in the job logs and that JET appeared to refer claimant to triage prematurely.

Claimant testified at hearing that she keeps regular and precise notes as to her activities in the JET program. Claimant read off several of these notes during the hearing, and these notes were verified by the Department representative. The notes contained information as to dates and times claimant attended job interviews, when claimant obtained job applications, and claimant's activities in the JET program. These notes are regular and precise enough that the undersigned feels that they contain the air of credibility needed to be considered as evidence. The content of these notes were verified by the Department.

Most significant is the note claimant took with regard to the circumstances of her non-participation. On or about October 28, 2009, claimant wrote that she had been told by a JET official that her case had been referred to triage on October 27, 2009. While the official JET notes show an entry on October 29 saying that claimant's case had been referred to triage, the

nature and specificity of claimant's note taking is enough that the Administrative Law Judge finds the notes extremely credible, and thus believes that claimant's case was referred to triage on October 27, 2009.

Claimant testified credibly that she had turned in her required job logs on October 28, 2009, the day they were due. The Department confirmed that the job logs were due on this day. However, claimant's logs were not accepted because her case had already been referred to triage. Strangely, the basis for the triage was claimant's failure to turn in these very job logs.

The undersigned is not entirely sure of JET's reasoning for referring claimant to triage when it did. Furthermore, there was no JET representative at the hearing to rebut claimant's allegations and evidence or to explain the situation. As such, the undersigned must rely on the most reliable evidence—claimant's precise notes that were taken at the time the action occurred, and which showed her case referred to triage before she had become non-participatory.

If JET had testified, they perhaps may have been able to rebut claimant's testimony and notes; they did not, and the only Department testimony is from the Department representative who had no first hand knowledge of the primary issue as to when claimant was actually referred to triage. The MIS case notes, while somewhat illuminating as to JET's reasons, only show when a particular case note was entered into their system—they do not show when the actual decision was made to refer claimant's case to triage. Therefore, the great weight of the evidence in the case shows that claimant's case was referred to triage when claimant had not yet failed to turn in her required assignments and was participatory, in violation of BEM 233A.

For that reason, the undersigned holds that claimant was meeting her required hours when referred to triage, and therefore, was not non-participatory.

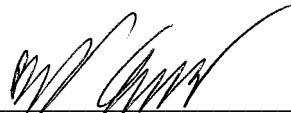
Therefore, as the Department based their decision on the information that claimant had not attended JET and claimant had actually attended JET, the Administrative Law Judge decides that the Department's decision was based upon incorrect information. Therefore, claimant's FIP case was sanctioned and closed 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 October, 2009. 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 reinstate claimant's FIP case retroactive to the date of negative action. The Department is **FURTHER ORDERED** to issue claimant any benefits missed as a result of the negative action.



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

Date Signed: 06/29/10

Date Mailed: 07/01/10

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.

2010-12881/RJC

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:

