

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201025165

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 5, 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 May 5, 2010.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and one year 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 a mandatory JET participant.
- (3) Claimant attended a mandatory community service program in the month of January and completed her required hours in that program.

- (4) Claimant's community service provider did not sign both sections of claimant's hour verification sheet.
- (5) Claimant was not allowed to secure the correct signature.
- (6) Claimant was given no credit for the hours of required activities she had performed.
- (7) Claimant was referred to triage on February 16, 2010.
- (8) Claimant was sent a DHS-4785, which scheduled a triage on March 2, 2010.
- (9) Claimant attended the triage.
- (10) At the triage, claimant was given no good cause.
- (11) The Department was unable to locate the hours logs which supposedly showed that claimant had no verifications for her community service participation.
- (12) On March 2, 2010, 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. 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.

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 at the triage is thus irrelevant, because no triage was necessary. 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 met her hour requirements.

At no point does the evidence presented show that claimant failed to meet her hour requirements with the JET program.

The MIS case notes, Department Exhibit 2, show that the issue instead revolved around whether claimant had had her participation log signed by the correct authorities. Claimant argued that the log was signed, but was not signed in all of the correct locations; claimant also testified that she had attempted to get the situation remedied, but was not allowed to do so before being referred to triage.

A review of the case notes proves the truthfulness of claimant's allegations; the notes specifically say that claimant did not have a signature specifically for one week of attendance, not the entire month. Claimant was given credit for 54 hours of participation in January, not 0 hours as alleged by the Department. Therefore, claimant

was averaging 18 hours per week at her community service location; when added to claimant's existing 54 hours of compliance, and taking into account the allowed 16 hours of absence, these 18 hours that were not signed off upon would have been enough to render claimant compliant. More importantly, the case notes in question does not dispute as to whether claimant attended; the case notes instead imply that claimant could not be given credit for hours she attended because she did not have an appropriate signature.

Furthermore, when questioned by JET officials regarding the missing signature, claimant explained that her location was on break until February 17 and she would be able to get the proper signature at that time. Claimant was not allowed to provide verification, or secure this signature, and was subsequently referred to triage.

At the triage, no verification or inquiry was sought as to whether the claimant had actually completed her required hours; again, the issue appeared to be not a dispute as to whether claimant had actually worked, but rather, whether claimant had had a form signed at the proper time.

Claimant testified that the logs in question showed that she had participated in the required number of hours. However, when asked to examine the logs in question, the Department was unable to locate the logs. As these logs were the Department's best evidence as to whether the claimant worked, and given that these logs were in the Department's possession, the undersigned has no choice but to assume that the logs would present evidence that was most favorable to the claimant—that they would show claimant actually participated her required number of hours. Therefore, the undersigned

must hold that claimant was never non-participatory, and therefore, never should have been triaged.

Given the mistakes in this case—the failure to allow claimant to verify her participation, the loss of critical evidence, the failure to investigate as to whether claimant was actually non-participatory before examining good cause—the undersigned would be reluctant to sanction the claimant regardless. However, the evidence of record and the credible testimony of the claimant leads to the conclusion that claimant participated with JET requirements during the month of January, 2010. At no point do the existing case notes dispute whether claimant attended JET; the dispute instead is whether or not an appropriate authority signed an appropriate piece of paper.

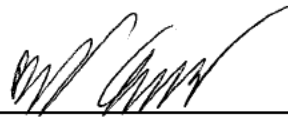
The undersigned is unconcerned with signature formalities, and is instead concerned with whether or not claimant actually attended required activities. The evidence of record shows that claimant did attend, and at no point do the JET officials responsible for the referral to triage and sanction appear to dispute claimant's attendance. Therefore, as the evidence of records shows that claimant was participatory, the Administrative Law Judge holds that claimant should not have been triaged, and that the sanction imposed was incorrect.

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 January 2010. 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 remove all negative actions placed upon
claimant's FIP case in regard to this action and reschedule claimant for JET classes.
Furthermore, the Department is 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: 08/18/10

Date Mailed: 08/18/10

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:

