

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

IN THE MATTER OF:



Reg. No: 201033590
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 1, 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 June 1, 2010.

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 Macomb County.
- (2) In January 2010, claimant and her son were referred to triage by JET officials for failing to attend and meet program requirements for the month of January 2010.

- (3) On March 19, 2010, claimant and her son were sent a DHS-2444, Notice of Non-Compliance.
- (4) The notice scheduled a triage for March 29, 2010 at 8:00am.
- (5) Claimant and her son did not attend triage.
- (6) Claimant's FIP case was closed in a response to the missed triage appointment.
- (7) No determination of good cause was made.
- (8) Claimant's case was sanctioned and closed on April 28, 2010.
- (9) This is claimant's first and second alleged incident of noncompliance.
- (10) On April 28, 2010, claimant filed a request for hearing, alleging that she disagreed with the actions of the Department of Human Services.

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. 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, a failure to participate 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 claimant. 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.

In the current case, the Department's procedures towards overcoming claimant's non-participation 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, these questions are, ultimately, irrelevant. The only relevant fact is that BEM 233A requires the Department to hold a triage and 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 claimant did not attend the triage. No mention of an independent good cause determination is made. 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.

DHS is required to hold the triage without the client, and discuss and consider all factors that are known about the client that may have contributed to good cause. A good cause determination must then be made, using these known factors. BEM 233A, p. 7. The available evidence shows that this determination was not made, and implies that the triage was not held, thus placing the Department in error.

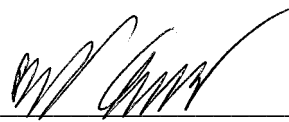
This Administrative Law Judge must therefore conclude that DHS was in error in its triage and post-triage procedures, and that the claimant's case should never have closed.

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 non-participatory in the first place, as is consistent with the Bridges Eligibility and Bridges Administrative Manuals for a first incident of noncompliance.



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:

