

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: 201036486

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 17, 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 17, 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 March 2010.

- (4) Claimant's community service provider did not have enough hours for the claimant and sent her home on several occasions at the beginning of the month.
- (5) JET required that claimant only turn in her community service logs at the end of the month.
- (6) Claimant made up the hours that she had missed at the beginning of the month toward the end of the month.
- (7) Claimant assumed that, because her logs were not due until the end of the month, she was allowed to make up hours anytime before the end of the month.
- (8) Claimant was given no credit for the hours of required activities she had performed at the end of the month.
- (9) Claimant was told that she had to complete her hours on a weekly basis and was sent to triage.
- (10) Claimant was referred to triage on April 13, 2010.
- (11) Claimant attended the triage.
- (12) At the triage, claimant was given no good cause and was sanctioned for one year.
- (13) This is claimant's third alleged incident of noncompliance.
- (14) On May 24, 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 or failed 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.

The Department does not allege in the current case that claimant did not complete her monthly hour requirements. Rather, the Department alleges that, while claimant did attempt to make up lost hours towards the end of the month, claimant had weekly hourly requirements, and she did not meet these requirements. The Administrative Law Judge agrees that this is the case; evidence presented shows that claimant had weekly hour requirements, and claimant admitted at the hearing that she did not meet these hour requirements.

However, given that claimant's job logs were only to be turned in once per month, and given the claimant's credible testimony, the undersigned believes that claimant committed at most, an honest mistake. This is further evidenced by the fact that claimant did attempt to make up the hours before turning in her logs in a timely manner. If claimant had been aware of the weekly hour requirements, the undersigned finds it unlikely that claimant would have attempted to make up the hours.

Therefore, as the evidence presented shows that claimant made an honest mistake, the undersigned does not believe that she "refused" to participate as contemplated by BEM 233A. Furthermore, as claimant made up the hours before turning in her logs in a timely manner, the undersigned does not believe that she "failed" to participate, as contemplated by BEM 233A. Thus, as claimant neither failed nor refused to participate, claimant could not have been non-participatory, and therefore met her hour requirements. Claimant should not have been referred to triage.

However, the undersigned would note that, as claimant is now on notice that her hours are to be met on a weekly basis, should claimant attempt to make up hours at the end of the month in a similar manner in the future, claimant could be said to be refusing to participate, as she should now be aware of the requirements of the program.

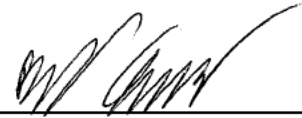
As claimant met her hour requirements, no triage was necessary, and the Department was in error when it placed a sanction on claimant's benefits.

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 March 2010. At no point did claimant fail or 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: 10/13/10

Date Mailed: 10/15/10

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:

