

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

IN THE MATTER OF:



Reg. No: 201038087

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 30, 2010

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 June 30, 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 Wayne County.
- (2) On April 26, 2010, claimant was referred to triage for a failure to meet required job search hours with the JET program.

- (3) Claimant was allegedly not meeting her required hours of work participation and had missed several class dates with no excuse.
- (4) Claimant missed the dates of April 19, 2010, April 20, 2010, April 21, 2010 and April 26, 2010.
- (5) Claimant met with an attorney on April 19, 2010 to discuss pending litigation.
- (6) Claimant attended court on April 20, 2010.
- (7) On April 21, 2010, claimant attempted to attend JET but could not get a ride from the JET transportation system.
- (8) On May 5, 2010, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for May 14, 2010 at 9:00am.
- (9) Claimant was told to bring verification for all dates missed.
- (10) Claimant attended the triage and a determination of no good cause was made.
- (11) This is claimant's first alleged incident of noncompliance.
- (12) Claimant offered proof of her court dates and explained that she was unable to secure transportation on April 21.
- (13) Claimant did not offer any proof of good cause for her absence on April 26.
- (14) On May 26, 2010, claimant's case was scheduled to be placed into negative action.

- (15) On June 3, 2010, claimant requested a hearing, stating that she disagreed with the Department's action and that she had good cause for her non-participation.
- (16) This is claimant's first incident of noncompliance.
- (17) Claimant declined a DHS-754 and elected to proceed with 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. 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...” PEM 233A pg. 1.

However, a failure to attend work related activities can be overcome if the client has “good cause”. Good cause is a valid reason for failing to attend employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the claimant. BEM 233A. **A claim of good cause must be verified and documented.** The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance, on the FIP case, the client can be excused, with certain conditions, as outlined on a DHS-754, First Noncompliance Letter; claimant declined to accept a DHS-754, because claimant did not believe she was noncompliant. However, the DHS-754 must be re-offered should the undersigned find claimant noncompliant. If claimant signs the DHS-754, claimant will be returned to JET without loss of benefits. BEM 233A.

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. At these triage meetings, good cause is determined based on the best information available during the triage and prior to the negative action date; should a determination of no good cause be made, claimant’s may agree to the conditions set forth in the DHS-754 to avoid a sanction. BEM 233A.

Claimant has not argued that she missed participation hours during the time in question but argued instead that she had good cause for the non-participation. In

support of her arguments, the claimant testified with regard to her legal matters and problems regarding transportation to and from JET.

The undersigned has examined the evidence, and finds that claimant can be given good cause for most of the dates. With regard to the absences on April 19 and April 20, the Department admits that claimant was meeting with her lawyer and in court those days. While claimant did not provide verification, the fact that the Department accepts claimant's explanation as fact is adequate, and the undersigned will decline to overrule the Department's determination. Therefore, claimant can be awarded good cause for the dates of April 19 and April 20, 2010.

With regard to April 21, Department Exhibit 2, MIS case notes, show that claimant attempted to comply with work related requirements. While claimant does not have verification of exactly what happened, MIS case notes verify that claimant attempted to attend JET, but was thwarted by the person who was giving transportation. The Department testified that claimant should have arranged the ride 24 hours in advance, and was thus at fault; the undersigned understands this argument, and believes the claimant should have been more diligent. However, claimant also testified credibly that she had never had trouble in the past arranging rides beyond the 24 hour time limit. Furthermore, the notes show that claimant was attempting to comply.

The undersigned believes that a plain reading of 233A shows that a claimant must "fail or refuse to appear". Good cause is defined as an unexpected event that happens that is beyond the control of the person attempting to comply. Claimant made a good faith effort to appear that day; she did not refuse to comply, and only failed because of circumstances, that, while not strictly out of her control, were, at the least,

unexpected. The undersigned is prepared to give claimant the benefit of the doubt for this date, and awards good cause.

However, the date of April 26 is another matter. Claimant was absent that day at JET, and was not able to provide a satisfactory reason at the hearing for that absence. Claimant did not submit or provide evidence of good cause for that date before the triage. Therefore, while the undersigned admits that claimant had good cause for several of the days in question, this finding does nothing to mitigate claimant's other absence. Claimant indisputably missed a day of JET and has not provided proof or verification of the reasons for missing that day. Because of this missed day, claimant did not meet her hour requirements, and thus, was non-participatory. Claimant has provided no evidence of good cause for the reason she missed that date, as is required by policy; therefore the undersigned must find that claimant was noncompliant.

Good cause must be verified; claimant has failed to do so. Therefore, the Department's finding of no good cause was correct, and claimant is therefore, noncompliant.

However, all evidence in the case file indicates that this is claimant's first incident of noncompliance. Noncompliance is defined as a failure to participate with work-related activities, without good cause. For a first incident of noncompliance, BEM 233A states that a DHS-754 should be given to the claimant to avoid the sanction associated with the noncompliance finding. Claimant refused a DHS-754, as was her right by policy, in order to proceed to the hearing level.

BEM 233A provides that the claimant is to be re-offered the DHS-754 if the Administrative Law Judge finds the claimant noncompliant; by signing it, claimant may

avoid a sanction and loss of benefits. The Administrative Law Judge has found the claimant noncompliant. Therefore, a DHS-754 is appropriate, and the Department must re-offer the claimant a chance to get into compliance and avoid the loss of benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not have good cause for her failure to participate in work-related activities, and is therefore, noncompliant.

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

As this is the claimant's first incident of noncompliance, the Department is ORDERED to provide claimant with a DHS-754, so that claimant may be offered a chance to get back into compliance in order to avoid a sanction. Should claimant sign this form, the Department is FURTHER ORDERED to restore claimant's FIP grant retroactively to the date of negative action and reschedule claimant for all required work-related activities.



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

Date Signed: 08/06/10

Date Mailed: 08/09/10

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:

