

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: 201041561

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 2, 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 August 2, 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) Claimant was a mandatory JET participant.
- (3) On March 29th, 30th and 31st, a mandatory group member and JET participant in claimant's group worked at a temporary job.
- (4) This group member did not inform JET of this job.

- (5) On April 6, 2010, claimant was deemed non-participatory with JET.
- (6) Claimant was subsequently assigned to triage.
- (7) On April 15, 2010, a triage was held.
- (8) Claimant argued that the group member in question had been temporarily employed and did not need to go to JET.
- (9) The Department did not request verification of this explanation.
- (10) The Department conceded that the group member had been working for the three days in question.
- (11) No good cause was given due to the failure to inform JET of the job beforehand.
- (12) Claimant's case was subsequently closed on June 1, 2010 for noncompliance.
- (13) On June 30, 2010, claimant requested a hearing, arguing that she should have had good cause for the non-participation in question.

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 “non-compliance”. BEM 233A defines non-compliance 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. BEM 233A states that:

“Good cause includes the following...

Employed 40 Hours

The person is working at least 40 hours per week on average and earning at least state minimum wage.”

The penalty for noncompliance is FIP closure. However, for the first occurrence of noncompliance on the FIP case, the client can be excused via the DHS-754 process. BEM 233A. In the current case, claimant had already signed and agreed to participate

using this process, when the group member in question failed to attend JET. The issue therefore, is not whether claimant was non-participatory without good cause before the signing of the DHS-754—claimant agreed that she was noncompliant when she signed the DHS-754—but rather, whether claimant was non-participatory without good cause when the group member failed to attend JET during this compliance test procedure.

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.

While a triage is necessary during the first case of non-participation and referral, the policy is silent as to the necessity of a triage for a failed compliance test. However, the Department decided to hold a triage and conduct a good cause review, and the Administrative Law Judge shall adjudicate the matter accordingly.

After a full review of the allowed evidence, the undersigned is of the opinion that claimant's benefits were terminated inappropriately.

BEM 233A specifically notes that good cause is to be awarded when a claimant or mandatory participatory group member is working an average of 40 hours per week for at least minimum wage. The Department did not dispute that this was the case at hearing, and the undersigned notes that the Department never requested or required verification of this job from the claimant at the triage. Claimant testified that the group member in question had worked 8 hours per day for three days, and was paid above minimum wage for the effort.

Rather, the Department's issue with the claimant's facts in the case is that the claimant did not notify the JET location beforehand.

No reading of BEM 233A can be said to require that a claimant notify JET of potential good cause before that reason for good cause has occurred. Verification or notification of good cause is only required at the triage; claimant fulfilled that requirement. A policy requiring a claimant to notify JET beforehand with regard to good cause reasons would betray the definition of good cause: a failure to participate with employment related activities due to factors that are beyond the control of the noncompliant person. Requiring notification of JET before the absence would be a concession that the absence was due to factors that the noncompliant person had control over; therefore, policy does not require prior notification in order to be awarded good cause.

In the current case, the group member in question could not, in good conscience, give up a paying job; in fact, doing so may have put him in violation of other policies in BEM 233A, which specifically prohibit refusing work. Therefore, this factor was out of his control, and he was required to miss JET.

While the undersigned admits that in the present case it may not have been a burden for the claimant to notify JET, this is not one of the requirements to be awarded good cause. The only thing the Department may consider is whether or not the claimant in the current case meets one of the listed definitions for good cause; in this case, employment of 40 hours on average per week for at least minimum wage. There is no dispute that this was what caused the group member in question's absence; therefore, good cause must be awarded.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant had good cause for the failure to attend the JET program by a mandatory group member during the month of March 2010.

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

The Department is ORDERED to open claimant's case retroactively to the date of negative action and supplement any missed benefits as a result of case closure. Claimant should be reassigned to required work-related activities.



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

Date Signed: 08/12/10

Date Mailed: 08/17/10

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:

