

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],  
Claimant

Reg. No: 2010642  
Issue No: 1038  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 4, 2009  
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 November 4, 2009.


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 an FIP recipient in Wayne County.
- (2) On July 31, 2009, claimant was referred to triage for a failure to meet required job search hours with the JET program, as well as a failure to attend during the previous weeks.

- (3) Claimant was allegedly not meeting her required hours of work participation, and had missed a class date with no excuse.
- (4) Claimant was given credit for 19 hours of participation during the week of July 5, 28 hours for the week of June 28, 18 hours participation for week of June 21, 20 hours of participation for the week of June 14 and 6 hours of participation for the week of June 7, preceding the triage referral.
- (5) Claimant had a participation requirement of 30 hours per week.
- (6) On September 2, 2009, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for September 15, 2009, at 9:00am.
- (7) Claimant attended the triage and a determination of no good cause was made.
- (8) This is claimant's first alleged incident of noncompliance.
- (9) Claimant offered proof that she had an appointment with her child's school on .
- (10) Claimant also argued that she had missed several days for health reasons, but provided no proof of this at the triage.
- (11) On September 30, 2009, claimant's case was scheduled to be placed into negative action.
- (12) On September 15, 2009, claimant requested a hearing, stating that she disagreed with the department action, and that she had good cause for her non-participation.
- (13) The negative action was deleted pending the outcome of the hearing.
- (14) Claimant was not offered a DHS-754.

#### 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 was not offered a DHS-754, ostensibly because this was

claimant's "second triage". However, the DHS-754 must be offered for any first incident of noncompliance, at the time a determination of no good cause is made. Claimant may have had any number of previous triages, as long as a determination of good cause was made at each of them. 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 submitted Claimant's Exhibit 1, a letter from her child's school district, which purported to show that she was in a meeting for her child on [REDACTED], one of the dates where she had failed to attend JET.

The undersigned has examined the evidence, and finds that the document does not go particularly far in proving claimant's allegations. The document in question is a letter addressed to the claimant stating that her daughter would start school on [REDACTED]; it makes no mention of a meeting or other event that would normally give rise to good cause.

However, the undersigned does not feel that this is a fatal flaw in the claimant's case; claimant's testimony was generally credible, and the Administrative Law Judge holds that the document in question at least gives some support to the testimony. For that reason, the undersigned can find that the claimant had good cause for not attending JET on [REDACTED].

Unfortunately, our analysis can not stop there. While claimant may have had good cause for [REDACTED], the bulk of the Department's contention, and the reason that claimant was assigned to triage, was because claimant had been routinely been missing her assigned participation hours. Department Exhibit 7, the Actual Hours entry, shows that during the weeks preceding the triage referral, claimant only met the assigned hours once, during the week in which claimant was just awarded good cause. For instance, during the week of June 7, claimant was only given credit for 6 participation hours; during the next week, June 14, claimant received credit for 20 participation hours. These totals are far below the required participation hours of 30.

While claimant alleged at triage that she or her children had been ill during the time, claimant admitted that she had not turned in any documentation. Therefore, while the undersigned admits that claimant had good cause for one day, [REDACTED], this finding does nothing to mitigate claimant's other non-participation problems in the preceding weeks. Claimant has missed many days and has not provided proof or verification of the reasons for missing those days.

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. While claimant has been to triage before, claimant was awarded good cause at the previous triages. 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 was not given a DHS-754, allegedly, because claimant had been to a triage previously, where she was awarded good cause.

This is not the standard for the DHS-754 process. The number of triages a claimant has been to is irrelevant for the purposes of the DHS-754; only the number of penalties claimant currently has on her record affect whether she is offered a DHS-754. Claimant, up to the point of this hearing, has no penalties. Therefore, a DHS-754 is appropriate, and the Department must offer the claimant a chance to get into compliance.

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.



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

Date Signed: 12/22/09

Date Mailed: 01/06/09

**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.

2010-642/RJC

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.

JV/dj

cc:

