

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

IN THE MATTER OF:



Reg. No: 201014473

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 26, 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 July 26, 2010.

ISSUE

Did the Department of Human Services (DHS) correctly impose a negative case action and three month 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 Wayne County.
- (2) Claimant was a mandatory JET participant.
- (3) On August 24, 2009, JET officials referred claimant's file to triage.
- (4) The stated reason for this was because claimant had a "very bad attitude".

- (5) No further elaboration was given.
- (6) No other stated violations of Department policy were noted.
- (7) A triage was held on October 15, 2009.
- (8) Claimant did not attend the triage.
- (9) Claimant was not given good cause at this triage.
- (10) Claimant was sent a DHS-754 after the triage, offering her a chance to get into compliance.
- (11) Claimant did not sign the DHS-754.
- (12) Claimant was sent back to JET, even though she did not sign the DHS-754.
- (13) Claimant was subsequently allegedly non-participatory and was referred back to triage.
- (14) A second triage was held on December 3, 2009, where claimant was once again found to have no good cause for failing to participate with JET.
- (15) Claimant was subsequently sanctioned from JET for 90 days.
- (16) On December 15, 2009, claimant requested a hearing regarding the outcome of the first triage where she was found to be noncompliant.

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 cannot 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.

Before proceeding further, it should be noted that there were two separate issues of non-participation brought up during the hearing: the first issue took place in July 2009, while the second issue took place in November 2009. The first non-participation ended up with a triage in October 2009; claimant did not attend that triage, but a DHS-754 was sent out anyway. Claimant refused to sign or agree to the terms in the DHS-754, and then, inexplicably, claimant was sent back to JET to allow her to get back into compliance with the program. The second non-participation occurred when claimant did not get back into compliance with JET.

While the undersigned believes that there may be serious issues with claimant's second alleged non-participation, the fact remains that, according to policy, claimant should never have been sent back to JET.

BEM 233A states that when a claimant refuses to sign a DHS-754, the Department is to assist the claimant with filing a hearing request regarding the noncompliance in question. At no point is the claimant to be sent back to JET—the claimant is not offering to get back into compliance, and is instead disputing the alleged noncompliance in the first place.

Therefore, while the undersigned sympathizes with the Department's attempt to give claimant another chance, the fact remains that the claimant should not have been sent back to JET, and instead, should have been given a hearing regarding her first incident of non-participation. As claimant should not have been sent back to JET, claimant could not have been non-participatory in November, 2009. Therefore, the undersigned will limit the consideration into this case solely to the July 2009 incident of non-participation and the subsequent triage. Everything following that subsequent triage was a mistake, albeit a well-meaning mistake, and cannot count with regard to the claimant's participation record.

However, after reviewing the facts of the case, the undersigned does not believe that the claimant ever refused 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 in October, 2009, is thus also 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 MIS case notes, Department Exhibit 5, state that claimant was sent to triage because she exhibited a "very bad attitude". At no point in the case notes is this finding elaborated on, nor is this "very bad attitude" defined within the policy constraints of BEM 233A. The Department representative was unable to testify as to what the JET official meant with this case note, and the JET official did not testify. The Department was

unable to state with any certainty the exact reason as to why the claimant was dismissed from the JET program and assigned to triage.

Due to the lack of evidence, the undersigned is therefore unable to state why claimant was sent to triage, and whether claimant's "very bad attitude" rose to the level defined in BEM 233A as non-participation. While certain behaviors contained in the broad generalization stated by the JET official may indeed be considered indicative of a refusal or failure to participate, many other behaviors are not. Without specifics, there cannot be a determination as to whether claimant actually refused or failed to participate; at most, the case notes indicate that the claimant may have had a dislike for her caseworker or the JET program in general. While claimant may have been unfriendly, this hardly rises to the level of a sanctionable offense.

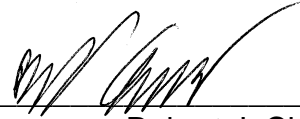
Thus, as there is no evidence that claimant refused or failed to participate, the undersigned will not hold that she refused or failed to participate. If claimant did not refuse or fail to participate, she should never have been dismissed from the JET program, assigned to triage, or been found to have no good cause. The Department therefore was in error when it sanctioned claimant and closed her FIP benefit case.

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 July 2009. At no point did claimant 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: 12/14/10

Date Mailed: 12/20/10

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:

