

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: 2010151
Issue No: 1021
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing on September 1, 2009, 2009. After due notice, a hearing was conducted on October 29, 2009. The Claimant appeared and testified. Craig Smith, FIS appeared on behalf of the Department.

ISSUE

Whether the Department properly issued a negative action and closed Claimant's FIP case for noncompliance with Work First?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was an active FIP recipient who was referred to JET.
2. The Department indicated that Claimant and/or her husband was noncompliant with Work First for attendance.

3. All documents provided by the Department relate to Claimant and not Claimant's husband. (Exhibit 1, pp. 1-11).
4. There was no testimony provided from JET or the Department regarding the days that Claimant or Claimant's husband were noncompliant.
5. The Department introduced Exhibit 1, p. 10, titled "Actual Hours Status Page" to show that Claimant was noncompliant. The document indicates that Claimant worked no hours the weeks of 5/24/09 and 5/31/09.
6. Claimant indicated that she was having medical issues with her asthma and knee and that she was disabled from working by her doctor.
7. Claimant provided a Medical Needs form signed by her doctor on 9/1/09 indicating that Claimant is suffering from tendonitis of the right knee and depression and that Claimant is unable to work at her usual occupation. (Exhibit 2). The doctor further indicated that Claimant was prescribed an inhaler.
8. The Department scheduled a triage on 7/30/09 to address Claimant's failure to meet Work First participation hours. (Exhibit 1, p. 2).
9. Neither Claimant nor her husband attended the triage.
10. Claimant testified that her Landlord was holding her mail and there were several items of mail that she did not receive. Claimant testified that neither she nor her husband ever received notice of the scheduled triage.
11. No good cause determination was ever issued by the Department.
12. Claimant's FIP case was closed on 8/7/09.
13. On September 1, 2009, the Department received the Claimant's written hearing request.

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 (formerly known as the Family Independence Agency) 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal and State laws require each work eligible individual in a FIP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. PEM 230A. All work eligible individuals who fail, without good cause, to participate in employment or self-sufficiency-related activities will be penalized. PEM 233A. Failure to appear at a JET program results in noncompliance. Id. A client can request a deferral from Work First. When a request for deferral is not granted, the Department is required to document the basis of the decision for denial and advise the client of their right to discuss the deferral decision with a supervisor and file a grievance if the client disagrees with the activities assigned at JET. PEM 230A, p. 19.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. PEM 233A at 4. Good cause includes being physically or mentally unfit for the job or activity as shown by medical evidence or other reliable information. Id. The penalty for noncompliance without good cause is FIP closure. Id. at 6. If good cause is established the negative action is to be deleted. Id. at 12.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

In this case, the Department indicated that the noncompliance was issued for both Claimant and her husband. There was no-one from JET present to testify as to the husband's noncompliance and the documentation provided by the Department refers only to the Claimant. Accordingly, the undersigned finds that the Department has failed to prove its case with regards to the husband's noncompliance and only Claimant's alleged noncompliance will be addressed.

The Claimant testified credibly that she did not receive notice of the triage as her landlord was withholding mail. Claimant further credibly testified that she was unable to work during the time period in question due to knee pain and asthma. Claimant provided medical documents from her doctor dated [REDACTED] (three months after the noncompliance) which indicate that Claimant was suffering from depression and that Claimant was unable to work at her regular occupation. There are no dates provided for the disability. Furthermore, the DHS-49 indicates that Claimant does not have any mental limitations and the physical limitations are such that Claimant should have been able to complete job search at Work First. Given the distance in time from the alleged noncompliance and the medical documentation as well as the fact that the doctor found Claimant not mentally limited, the Administrative Law Judge finds that Claimant failed to show good cause for the noncompliance.

Had Claimant received notice of and appeared at the scheduled triage, however, the Department would have been able to provide Claimant with the option of signing a DHS-754 indicating that no good cause was shown but not closing the case entirely. The undersigned, therefore, finds that the Claimant did not receive notice of the scheduled triage and that Claimant

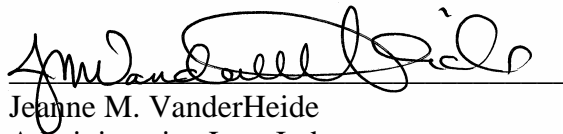
did not prove good cause for her missed attendance. Based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED in part and Orders that the Department offer Claimant a DHS-754.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department's determination is not upheld.

Accordingly, it is ORDERED:

1. The Department's case closure of 8/7/09 for noncompliance for missing Work First shall be deleted and the Claimant's case shall be reopened back to the date of closure.
2. Claimant did not receive notice of the 7/30/09 scheduled triage. However, the Claimant also did not prove good cause for noncompliance for attendance for the weeks of 5/24/09 and 5/31/09. Therefore, the Department shall provide Claimant with the opportunity to sign a DHS-754 where Claimant acknowledges the negative action. If this is Claimant's first negative action, her benefits will continue following a warning. If this is Claimant's second negative action, her benefits will continue following a 3 month penalty period pursuant to Department policy.
3. The Department shall supplement the Claimant with any lost benefits she was otherwise entitled to receive after Claimant signs the DHS-754.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/09/09

Date Mailed: 12/11/09

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

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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.

JV/dj

cc:

