

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: 201044424

Issue No: 1038

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 18, 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 August 18, 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 May 12, 2010, 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 JET during the previous weeks.

- (3) Claimant was allegedly not meeting her required hours of work participation, and had missed several class dates with no excuse.
- (4) Claimant was given no credit for hours of participation during the month of April.
- (5) Claimant admitted that she had not attended JET during this month.
- (6) On May 12, 2010, claimant was sent a DHS-2444, Notice of Noncompliance, which scheduled a triage for May 19, 2010 at 1:00pm.
- (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) During the triage, claimant stated that she had missed JET because of school attendance, but gave no reason for failing to turn in job logs.
- (10) On July 1, 2010, claimant's case was scheduled to be placed into negative action.
- (11) On May 26, 2010, claimant requested a hearing, stating that she disagreed with the negative action.
- (12) 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 claimant was not given good cause. However, the DHS-754

must be offered for any first incident of noncompliance, at the time a determination of no good cause is made. A finding of no good cause is the specific reason that a DHS-754 is to be offered. 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, claimants may agree to the conditions set forth in the DHS-754 to avoid a sanction. BEM 233A.

After examining the evidence, the Administrative Law Judge determines that the Department has shown with clear and convincing evidence that the claimant did not attend required JET participation hours. Department Exhibit 4, a report from JET shows that claimant did not receive any participation hours during the month of April. During the hearing, claimant did not dispute this, and confirmed that it was accurate.

Furthermore, claimant was given an adequate triage, and good cause was appropriately considered.

Therefore, our question must therefore be a question of whether claimant was appropriately denied good cause. After a consideration of claimant's testimony, the undersigned believes that good cause was not appropriate in the current case.

Claimant testified at hearing that she was aware that she had missed her required hours in April. When asked as to the reason she had missed so many hours, claimant stated that she did not see the point of the class, and that the classes mostly consisted of sitting around and busywork, when she felt that she could better spend her

time in other pursuits. As to the failure to turn in job logs, claimant testified that others were given the opportunity to search for jobs without turning in documentation; when she inquired as to this process, she was told that she was ineligible. Claimant continued her job searching on her own time, and admitted to not turning in the logs.

While the undersigned is sympathetic to the busywork argument, the State may nevertheless put any conditions it wishes on benefit recipients, within reason. The condition the State has selected in this case is the requirement that all FIP recipients attend the JET program. Regardless of the merits of the JET program to the claimant, claimant was still under a requirement to go if she wished to receive FIP monies. Likewise, the undersigned has no reason to doubt that claimant was searching for work on her own time. However, part of receipt of FIP benefits was the condition that she turned in the job logs. Claimant failed to do so, and admitted as much during the hearing.

Claimant did not give a reason for good cause that is compatible with the definition of good cause as explained in BEM 233A. As claimant did not give a reason for good cause, good cause could not be awarded. 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 was not given a DHS-754, allegedly because

the workers at the triage were under the mistaken assumption that a DHS-754 was to be awarded only to those claimants who were awarded good cause.

This is not the standard for the DHS-754 process. A DHS-754 is to be awarded for a first incident of noncompliance, when the Department has decided that no good cause could be awarded. A DHS-754 is not to be given when a claimant has been given good cause, because the finding of good cause means that a claimant was not noncompliant—noncompliance means failing to participate without good cause, per BEM 233A. Claimant, up to the point of this hearing, has no penalties. The Department decided that claimant did not have good cause. The failure to find good cause means the claimant was noncompliant, and this was the first time claimant has been found noncompliant. 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. Should claimant sign the DHS-754, the Department is FURTHER ORDERED to remove all sanctions from

the claimant's record and reopen benefits retroactively to the date of negative action, and supplement claimant for all missed benefits.



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

Date Signed: 08/26/10

Date Mailed: 08/27/10

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:

