

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: 2010-5088
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 11, 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 February 11, 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 applied for FIP assistance on July 7, 2009 in Macomb County.
- (2) Claimant was notified on August 27, 2009 to attend Job Club orientation on August 31, 2010.
- (3) Claimant did not attend this class.

- (4) Claimant allegedly did not attend class on August 20, 2009, and therefore, did not receive credit for homework for the previous week.
- (5) A note on August 27, 2009 notes that claimant has completed all requirements.
- (6) Claimant's application was subsequently denied for failing to attend JET.
- (7) At the time of the application denial, claimant's application was outside of the standards of promptness for processing.
- (8) On September 14, 2009, claimant requested a hearing.

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 “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...” PEM 233A pg. 1.

However, non-compliance can be overcome if the client has “good cause”. Good cause is a valid reason for non-participation with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the noncompliant 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 can not 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.

The undersigned will first note that the claimant’s application was processed outside the 45 day time limit for processing FIP applications. The Department testified that claimant was not entitled to a triage or good cause determination in the matter because her application was still pending.

There are arguments for and against whether a pending application is entitled to a good cause determination; however, the undersigned will decline to examine them in this decision.

What is important is, had the Department processed claimant's application in a timely manner, claimant would have been entitled to a triage.

The Department argues that the claimant's noncompliance happened while the application was still pending; they are referring to the incident that allegedly happened on August 20, 2009. Therefore, the claimant's application should be denied. The undersigned, however, holds that under this interpretation, the Department would be correct in denying an application after it had already been approved, as long as the non-participation in question happens while the application is still pending and the Department was unaware of the non-participation when they approved the application. The undersigned believes that all actions by the Department must be judged by the circumstances at the time the action was taken, not at a hypothetical time when the application was still pending.

Claimant applied for FIP benefits on July 7, 2009. Claimant's application should have been processed by August 22, 2009, which was 45 days after the application date. Claimant's application should not have been pending on the date of the denial, and had the application not been pending, claimant would have been entitled to a triage for not participating with JET, regardless of when the non-participation actually occurred. As claimant's ineligibility for triage was the direct result of a mistake by the Department, the undersigned will not find that the Department was correct when claimant was denied the triage.

However, with regard to the claimant's alleged incident of noncompliance, the undersigned is having difficulty determining whether the claimant was ever non-participatory to begin with, and therefore even required a triage.

The MIS case notes, Department Exhibit 2, show that as of August 27, 2009, claimant had "completed assessment and job search components in the JET program", and was referred to

Job Club. The basis for the noncompliance assessment was the fact that claimant allegedly missed class on August 20 and did not turn in required homework. The only place this absence is noted is on a note filed on September 1, 2009. This absence is not noted on August 20, or in any other place. The note of August 27 shows that claimant had completed all requirements. The inconsistency of these notes shows that there is significant doubt as to whether the claimant failed to attend JET on August 20, 2009. At the very least, given that this note is the entirety of the Department's case, the Department has failed to meet their burden of proof in showing that the claimant failed to attend JET. As such, the Administrative Law Judge cannot find that claimant failed to attend JET. Therefore, claimant did not refuse to participate, and the Department was in error when it held that claimant had done so.

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 August, 2009.

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

The Department is ORDERED to reprocess claimant's FIP application of July 7, 2009.



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

Date Signed: 04/28/10

Date Mailed: 04/28/10

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:

