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: 2009-18978
Issue No: 3029
Case No: [redacted]
Load No:
Hearing Date:
May 19, 2009
Jackson 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 May 19, 2009.

ISSUE

Was the claimant's FAP application properly denied for a failure to comply with work requirements?

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 Food Assistance Program on 2-20-09.

(2) Claimant's case was previously closed when claimant was fired from a job in September, 2008, and it was determined that claimant did not have good cause for the firing.

(3) When applying in the current case, claimant was given a DHS-402, FAP Compliance Test, in order to prove compliance and thus become eligible for benefits per PEM 233B.

(4) This compliance test required claimant to apply for three jobs within a ten day period to re-establish eligibility.

(5) Claimant returned the DHS-402 to his caseworker with three employers contacted.

(6) On 3-17-09, claimant's caseworker made a random contact with one of the employer's listed on the contact form.

(7) Claimant's caseworker was told by the employer that claimant would not be hired because he told them that he only wanted them to sign the paperwork in order to re-establish eligibility and that claimant had no intention of actually applying for the job.

(8) Claimant's caseworker proceeded to deny claimant's FAP eligibility based upon a determination that claimant was still not compliant.

(9) On 4-6-09, claimant requested a hearing, alleging that he had not told the employer anything of the sort.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Non-deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. Unlike FIP benefits, which are tied to participation in the WF/JET program, there are no hourly work participation requirements in the Food Assistance Program except for TLFA. In order to receive Food Assistance Program benefits, non-deferred adults who are not working or are working less than 30 hours per week must accept a bona-fide offer of employment and participate in activities required to receive Unemployment Compensation (UC) if the client has applied for or is receiving UC. PEM 233B pp. 1 and 2.

However, non-deferred adults who were working and then are fired without good cause from a job for misconduct or absenteeism (i.e. not for incompetence) must be disqualified and given a sanction period of one or six months, depending on the number of occurrences. PEM 233B.

After a one-month or six-month disqualification, the noncompliant person must complete a compliance test to become eligible again for FAP. When a disqualified client indicates a willingness to comply, an opportunity is given to test his/her compliance. Local offices have latitude in the design of compliance tests; examples of activities include, but are not limited to, applying for three jobs within 10 days, using a DHS-402, "FAP Compliance Letter and Job Application Log."

In the current case, the Department argues that the claimant has not satisfied the compliance test that the local office set with regard to claimant's work related activities; specifically, that, while claimant went through the motions and nominally applied for a job, he had no intention of seriously applying, and made that clear to the employers he met with.

While it is true that the regulations do not specifically state that a claimant must make a reasonable effort in his compliance test, the undersigned agrees with the Department's argument that nominal compliance, such as is alleged in this case, is no compliance at all.

In order to apply for a job, an applicant must make it clear to the employer that he or she has serious intentions of taking the job if offered. This is not to say that an applicant may later refuse the job, should the circumstances that led to the initial application change; however, simply submitting an application, without the real intent to take the job, is not a real application.

The DHS-402 is meant to test the claimant's willingness to comply with work-related activities. It does not require actual employment; only that claimants show that they are making an attempt to find real employment. Simply going through motions violates the spirit and the likely intention behind the test in the first place—that those on public assistance strive to one day no longer need such assistance. Thus, the Department is correct that an application submitted with no intent behind it to actually take the job is not compliance at all.

This, however, does not address the issue of whether the Department has met its burden of proof in proving that the claimant was noncompliant.

Claimant argument had several points. First, that he did apply; second that he never told anybody at the employer in question that he would not take the job; and third, even if he did state such a thing, this statement, as told to the Department caseworker by the employer constituted hearsay, and is therefore, inadmissible into evidence.

Claimant's first point has already been addressed; the issue is not whether claimant applied, but whether claimant was compliant with the DHS-402 test. Simply applying for a job is not enough, as stated above; claimant must have used the test to show a willingness to comply with work-related activities. The Department is not arguing that claimant didn't apply; the Department is arguing that claimant did not comply with the test when he did apply.

With regard to the claimant's third argument on the admissibility of the statement of the employer, the Administrative Law Judge, after researching the issue, rules that the statement is admissible. While the Michigan Administrative Procedures Act provides that administrative hearings are not bound by the rules of evidence as are a normal court room (though an Administrative Law Judge should follow the normal evidentiary rules if at all possible), the undersigned feels that the statement would be allowable even if the issue at hand was being conducted in a normal court. MCL 24.275.

Hearsay is commonly defined in law as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. In the current case, it is important to recognize that the Department did not offer the statement to prove the truth of the matter asserted.

In any administrative hearing, the basic test that is employed to determine whether to reverse the agency decision in question must be stated thusly: Was the Department's decision correct, based on the information it had, or should have had, at the time it made the decision?

This test is important because it helps us determine whether or not the Department's introduction of the statement into evidence constituted hearsay. More specifically, the Department did not introduce the statement to prove the claimant's intention to "go through the motions" at the time of the application; the Department introduced the statement (as told to them by the employer), in order to demonstrate the information that they were working with at the time. In other words, the statement is not being used to prove the truth of the matter asserted. It is instead being used to show that the Department's decision was correct based upon the information it had at the time. The distinction is fine, admittedly. However, the distinction is important in the undersigned's determination that the statement in question does not constitute hearsay. Therefore, the statement is admissible.

This then, leaves us with claimant's second argument: that claimant never stated to the employer that he was only going through motions of compliance.

It is worth repeating at this juncture that the undersigned is only examining whether the Department's decision was correct at the time it made that decision, with regard to the information it had, or should have had, in its possession. It is true that claimant may indeed never have said any such thing to the employer. It is true, as the claimant alleged at hearing, that somebody in that particular business may have had a grudge against the claimant. That being said, claimant has presented no evidence beyond his own statement. Had the claimant presented any such evidence, the Administrative Law Judge could rule that this was information was of such that the Department should have known it, and therefore rendered an incorrect decision.

However, the claimant has submitted no such evidence, and therefore, the undersigned must only rely on the evidence that is in the record to render his decision.

This brings us back to our original question: Has the Department met its burden of proof in proving that its decision was correct, based upon the information it had, or should have had, at the time it made the decision? The undersigned believes that it has.

The facts are these: The Department issued a compliance test. Claimant returned the compliance test. Claimant's caseworker investigated claimant's compliance, and was given evidence that claimant was not compliant. Based upon that evidence, the Department decided that claimant was still noncompliant.

These facts, with regard to our underlying test, only leave us with one final issue: was the information that the Department relied upon reasonable?

The undersigned believes that it was. The Department was investigating the issue of whether claimant was truly compliant. It called a random employer; this employer had no way of knowing that it would be contacted, and has no compelling interest in claimant's financial

situation with regard to the Department. The Department only asked whether the claimant had actually applied for a job with the employer. The employer told the Department that claimant had not. The Department had no reason to suspect falsehood from this employer. Thus, the evidence it had of the claimant's noncompliance was reasonable.

Therefore, we may adjust our fact pattern above slightly—claimant's caseworker investigated claimant's compliance, and was given reasonable evidence that claimant was not compliant. Based upon this reasonable evidence, the Department made its decision.

Our test has therefore been satisfied. The Department made a decision based upon reasonable evidence. All procedures were followed correctly, and the decision was made correctly based upon the information the Department had in its possession. The Department followed the policies when making its decision of noncompliance. Therefore, the Department's decision was correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to deny claimant's FAP application was correct.

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

AFFIRMED.

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

Date Signed: June 8, 2009

Date Mailed: June 9, 2009

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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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/cv

cc: [redacted]