

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

IN THE MATTER:

[REDACTED]

Reg No. 200931447
Issue No. 1038
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 29, 2009
St Clair County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 a hearing. After due notice, an in-person hearing was held on September 29, 2009. Claimant and her significant other personally appeared and testified.

ISSUE

Did the department properly propose to impose noncompliance penalties on claimant's Family Independence Agency (FIP) and Food Assistance Program (FAP) grants in May 2009?

FINDINGS OF FACT

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

1. Claimant, her partner and their minor child in common reside together in [REDACTED]
2. At all times relevant, claimant's partner was a mandatory participant in all employment and/or employment-related activities assigned or approved by his case manager at the Jobs, Education and Training (JET) Program site.
3. Participation in JET is required to avoid suspension of monthly FIP/FAP benefits in accordance with the penalty schedules set forth in BEM Item 233A, pg 1 and BEM Item 233B, pg 1.

4. Claimant's partner's mandatory assignment was to attend culinary arts school eight hours per week, and also, to perform community service at [REDACTED] another sixteen hours per week (Department Exhibit #1, pg 30).
5. Claimant's partner did, in fact, participate in all but one scheduled culinary arts class, and also, he gave 100% during all lectures, thus leading to culinary arts certification and graduation on September 16, 2009 (Client Exhibit A).
6. Four months earlier, specifically on May 14, 2009, the department scheduled a triage meeting with this couple because FIP/FAP noncompliance sanctions were being considered based on his purported failure to participate at [REDACTED] as assigned.
7. On May 19, 2009, the department received a hearing request protesting the imposition of FIP/FAP sanctions; consequently, these penalties were deleted pending appeal.
8. Claimant's appeal hearing was held on September 29, 2009.
9. The department's witness stipulated at hearing she was not this couple's assigned triage worker and she knew nothing about their case other than what the notes said and what they told her during the triage meeting.
10. The parties stipulated at hearing the JET absence policy permits sixteen hours of absences within a specified time frame, and claimant's partner's permitted tally exceeded this amount solely because he was counted as absent from [REDACTED] on the Friday before Easter Sunday, that being April 10, 2009 (Department Exhibit #1, pgs 31 and 32).
11. Claimant's partner testified credibly at hearing (as did claimant) that no one worked at [REDACTED] that day because the store was closed due to the holiday (Good Friday).
12. Claimant's partner also expressed concern that he and the [REDACTED] supervisor never got along well from the start, fueled in part by this man's inquiry into how long ago it had been since claimant's partner was released from prison.
13. Claimant's partner testified at hearing he has never been in prison.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

The department initiated the Jobs, Education and Training (JET) Pilot Program on April 1, 2006. This program replaced the former Work First Program, implemented in 1996 under the welfare reforms initiated by President Clinton through his signing of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This Act established a block grant program to distribute federal taxpayer dollars to state governments to fund state cash assistance programs like Michigan's FIP program, and also, required all states to develop and implement mandatory employment-related activities, rules and policies for welfare recipients.

Under JET rules, a Work Eligible Individual (WEI) is a FIP recipient who counts in the state's federal work participation rate. BEM Item 228, pg 2. As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency related activities. Noncompliance is defined in part in policy as failing or refusing to appear and participate with the JET program or other employment service provider, failing to comply with activities assigned on the Family Self-Sufficiency Plan (FSSP) or Personal Responsibility Plan and Family Contract (PRPFC), and failing to appear for any scheduled appointment or meeting. BEM Item 233A, pgs 1 and 2. Additionally, certain parameters have been established by the department to assess whether or not sanctions are appropriate in any given case.

Claimant's partner testified credibly at hearing he was well within the allowed absence level necessary to avoid FIP/FAP sanctions if [REDACTED] store closure on Good Friday had been properly taken into account (See Finding of Fact #10 and #11 above). This Administrative Law Judge agrees with claimant's partner.

Although the department's witness said the store was open, she did not know this from personal knowledge nor did the department submit any documentary evidence or corroborating testimony to verify the store's hours that day. As such, this Administrative Law Judge finds claimant's partner's testimony more credible because he was in the best position to know the store's hours that day due to working there.

Lastly, in closing, it must be noted that, by the time the hearing date arrived the department's witnesses added a second reason for imposition of the proposed sanctions, namely, claimant's partner eventually ended-up getting fired purportedly without good cause.

The problem with the department's allegation is that no credible facts from anyone with personal knowledge surrounding this purported, justifiable firing were present at hearing. By contrast, claimant and her partner succinctly, candidly and credibly testified they believed the firing likely had to do with the poor supervisor/employee relationship between the parties than with claimant's partner's failure to perform his job duties as assigned. As such, this Administrative Law Judge finds claimant's arguments at hearing are credible and rise to the level necessary to successfully refute the department's lack of evidence in favor of sanctioning. In short, the department's proposed actions simply cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erroneously proposed to impose noncompliance penalties on claimant's FIP/FAP grant in May 2009, because noncompliance has not been shown.

Accordingly, the department's proposed actions are REVERSED, and this case is returned to the local office for deletion of the proposed penalties. **SO ORDERED.**

/s/

Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: October 12, 2010

Date Mailed: October 13, 2010

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 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.

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