

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: 2009-36964

Issue No: 3029

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 22, 2009

Newaygo County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 telephone conference hearing was held on October 22, 2009. Claimant appeared and testified. Brandy Pevore appeared and testified on claimant's behalf. Dixie Curtis, ES, and Kim Polasek, Lead ES, appeared on behalf of the department.

ISSUE

Did the Department of Human Services (department) properly close claimant's Food Assistance Program (FAP) benefits for non-cooperation with work 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 an ongoing recipient of FAP benefits.
- (2) Claimant stopped working on May 19, 2009.

(3) Claimant applied for another benefit program on June 17, 2009 and did not list any employment or income on the application. (Department Exhibit 1 pgs. 22-26)

(4) On June 22, 2009, the department sent claimant a Verification of Employment form to have his employer to complete and return with a due date of July 2, 2009. (Department Exhibit 1 pg. 21)

(5) Claimant's case was also due for a semi annual review and on July 1, 2009 the department sent the Semi Annual Contact Report for claimant to complete and return by August 1, 2009. (Department Exhibit 1 pgs. 18-19)

(6) On August 10, 2009 claimant returned the Semi-Annual Contact Report but the department did not log it as received because claimant did not attach any verification that his prior employment ended. (Department Exhibit 1 pgs. 18-19)

(7) On September 11, 2009 the department verified that claimant's employment ended on May 19, 2009, after claimant refused to take a blood test for drugs and alcohol. However, the employer first indicated claimant voluntarily quit during a phone call and later indicated claimant had been fired on a form completed September 17, 2009. (Department Exhibit 1 pgs. 6-7 and 14)

(8) The department closed the FAP benefits effective September 1, 2009. (Department Exhibit 1 pg. 1)

(9) Claimant filed a hearing request to contest the FAP closure on September 17, 2009.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals.

Under BAM 105, clients must cooperate with the local office in determining initial and ongoing eligibility. The department is to request verification when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130. The department is to allow 10 days to provide the verification requested and a negative action notice is to be sent when the client indicates refusal to provide a verification or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130. Clients must also report changes, including changes of employment and income, within 10 days. BAM 105.

Under BEM 233 B, a non-deferred adult who is working will be disqualified from receiving FAP benefits when they:

- Voluntarily quit a job of 30 hours or more per week without good cause, or
- Voluntarily reduces hours of employment below 30 hours per week without good cause, or
- Is fired without good cause from a job for misconduct or absenteeism (i.e. not for incompetence). Misconduct sufficient to warrant firing includes any action by a worker that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is **not** limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

In the present case, claimant did not report that his employment ended to the department within 10 days of the change. Claimant stopped working May 19, 2009 and the department first

learned of the employment change on a June 17, 2009 application for another benefit program. On June 22, 2009 the department requested verification of the employment ending by July 2, 2009, but the Verification of Employment form was not returned. Claimant's case was also up for review and on July 1, 2009 the department sent him a Semi Annual Contact Report to complete and return with a due date of August 1, 2009. Claimant returned the Semi Annual Contact Report on August 10, 2009. The department testified they did not log the return of this form because claimant did not attach any verification that his prior employment had ended. However, upon review of the Semi Annual Contact Report form, the only proofs for income requested are for any current income in the last 30 days. The form itself does not request that a claimant attach proof of termination of any prior employment. The department should have logged claimant's return of the Semi Annual Contact Report.

While claimant may not have provided documentation that his employment ended, the department was able to obtain verification directly from the employer. During a September 11, 2009 phone conversation with the employer, the department verified that claimant's employment ended on May 19, 2009 because claimant refused to take a blood test for drugs and alcohol. However, the employer indicated claimant voluntarily quit during that phone conversation and on a Verification of Employment form later indicated that claimant was fired.

Under BEM 233 B, as cited above, claimant would be disqualified from the FAP program for either a voluntary quit or being fired for refusing to take the drug test. Claimant and his witness testified that claimant was not treated fairly by the employer, the accusations of drug or alcohol influence at work were false, and that the employer was trying to get rid of him. However, BEM 233B specifically includes drug and alcohol influence as misconduct sufficient to warrant firing. BEM 233B also disqualifies an individual for voluntarily quitting a job without good cause. There is no disagreement that claimant stopped working on May 19, 2009,

after refusing to take a blood test to disprove accusations that he was under the influence of drugs or alcohol at work. Accordingly, good cause can not be found for the termination of employment whether claimant voluntary quit or he was fired by the employer for refusing the blood test.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed claimant's FAP benefits for noncompliance with work activities.

Accordingly, the department's FAP determination is AFFIRMED.

/s/

Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 26, 2009

Date Mailed: October 27, 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 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 mailing date of the rehearing decision.

CL/cv

cc:

