

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant,

Reg No: 2009-16942

Issue No: 3015, 6019

Case No: ██████████

Load No: ██████████

Hearing Date:

May 28, 2009

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

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 hearing was conducted from ██████████ on May 28, 2009.

ISSUE

Whether the Department properly terminated Claimant's Food Assistance Program (FAP) and Child Development and Care (CDC) due to excess income?

FINDINGS OF FACT

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

- (1) Claimant was a FAP and CDC recipient.
- (2) The Department received a Semi-Annual Contact Report with several changes reported by Claimant including the amount of earned income, unearned income

from child support which had not been previously budgeted and Claimant's son, [REDACTED], no longer being employed.

(3) The Department removed Claimant's son from the group as a sanction for being terminated from employment without good cause based on his termination letter from his employer. (Exhibit 9) Claimant testified that she worked for the same employer as her son and the terminating manager told her that her son was terminated because he was a probationary employee and he was too slow with his job duties.

(4) On February 24, 2009, the Department completed new FAP and CDC budgets based on the reported changes and the sanction which resulted in monthly FAP and CDC benefits of [REDACTED] due to excess income. (Exhibits 2-4, 6-8, 10-21)

(5) On February 24, 2009, the Department mailed Claimant an Eligibility Notice which explained that her FAP benefits would be cancelled effective March 10, 2009 due to excess net income. (Exhibit 1)

(6) On February 24, 2009, the Department mailed Claimant a Child Development and Care (CDC) Client Notice which explained that her Child Development and Care services would change effective March 15, 2009 because her income exceeded the limit for child care. (Exhibit 5)

(7) On March 9, 2009, the Department received the Claimant's hearing request protesting the termination of her FAP and CDC benefits.

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. Departmental policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

All earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means ALL income that is not earned and includes FIP, RSDI, SSI and UB. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. PEM 500

The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected.

Prospective budgeting is the best estimate of the client's future income. PEM 505

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15.

PEM 505

The Department should disqualify non-deferred adults who were working when the person:

- Voluntarily quits 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. PEM 233B, p. 3, 4.

In the instant case, Claimant agreed with the income and expense figures the Department used in completing the February 24th FAP and CDC Budgets. She did not agree with removing her son from the group as a sanction and neither do I.

The Department sanctioned Claimant's son because he was "terminated from employment without good cause". The policy clearly states that an individual should be disqualified if he or she voluntarily quits a job or reduces hours of employment WITHOUT GOOD CAUSE. In other words, the individual needs to establish that there was a good reason for him or her to take this action. That makes perfect sense.

However, the termination policy language is not clear at all. It says that an individual should be disqualified if he or she IS FIRED WITHOUT GOOD CAUSE FROM A JOB FOR MISCONDUCT OR ABSENTEEISM (i.e. not for incompetence) I believe the policy, which is poorly worded, attempts to say that a person should be disqualified if they are fired for misconduct (intentional disregard of employer's interest or gross negligence) or absenteeism and not just poor job performance and, maybe, the good cause comes into play to give the individual a chance to explain his absenteeism. I'm not sure why or how you could show good cause for misconduct.

Regardless, the basis for the Department sanction did not go nearly that far in terms of fact finding and analysis. It was based on a generic termination letter and, more importantly, the 1st half of the sentence only – Claimant's son "was fired without good cause". In other words, in order to not get sanctioned Claimant would have had to prove to the Department that her son was fired with good cause? That simply does not make any sense. The Department made no finding of misconduct or absenteeism and, based on the testimony of Claimant and the contents of the termination letter, none could be found.

With the above said, the Department has not established that it acted in accordance with policy in terminating Claimant's FAP and CDC benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department did not act in accordance with policy in terminating Claimant's FAP and CDC benefits.

Accordingly, the Department's FAP and CDC eligibility determinations are REVERSED, it is SO ORDERED. The Department shall:

(1) Complete new FAP and CDC budgets for Claimant including her son, [REDACTED], (a group size of 6 instead of 5) to determine if she is eligible for FAP and CDC benefits, and

(2) Issue Claimant any supplemental benefits that she may be entitled to, if any.

/s/
Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 29, 2009

Date Mailed: June 2, 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 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.

SMB/db

cc:

[REDACTED]