

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: 2009-23331
Issue No: 1038/3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 17, 2009
Cheboygan 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 claimant's request for a hearing. After due notice, an in-person hearing was held on November 17, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's Food Assistance Program (FAP) case based on noncompliance with assigned Jobs, Employment and Training (JET) 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 is a 50-year-old former carpenter who suffered multiple, severe orthopedic injuries when he fell three stories during a work-related accident in 2002 (Department Exhibit #1, pg 27).

(2) At all times relevant to this dispute, claimant was the grantee-member of an ongoing FIP case with two minor children in his household; however, he stipulated at hearing he has no grievance with the department's action relative to his FIP case.

(3) In 2007, claimant filed a Social Security disability application which remained on appeal at all times relevant to the proposed negative action disputed herein.

(4) In March 2009, the department deemed claimant physically/mentally capable of participating in mandatory work-related activities as a condition for continued FAP benefits and notified him of this status.

(5) Claimant attended his assigned individual JET orientation on April 17, 2009, but subsequently he claimed good cause for lack of continued participation based on "Client Unfit," as defined in BEM Item 233A, pg 4.

(6) On May 19, 2009, claimant's long-term family doctor completed a medical assessment which limits him to less than sedentary work activities, and also, she opined claimant was incapable of maintaining any type of substantial gainful work activity (Client Exhibit C).

(7) By that time, the department had already advised claimant by written notice dated May 8, 2009 (DHS-1605) his FAP case was being proposed for sanction due to his failure to participate in employment-related activities as assigned without good cause.

(8) On May 14, 2009, the department received claimant's hearing request; consequently, the proposed FAP sanction was deleted pending issuance of this Hearing Decision.

(9) Claimant's hearing was not held until six months later, specifically, on November 17, 2009.

(10) While waiting for this hearing date, claimant received a Fully Favorable Social Security Disability Decision, which establishes his disability began on March 1, 2007, based on

left ankle fracture residuals so severe they meet the criteria necessary for Listing Level approval (Client Exhibit A, pgs 1-3).

(11) This Social Security Administration (SSA) notice is dated May 29, 2009, which is the same month the department received claimant's family doctor's medical assessment identical to the SSA's ruling (See Finding of Fact #6 above).

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's policy located in BEM Item 233B, pg 1, states that noncompliance with assigned activities without a showing of good cause may result in FAP sanctioning if both FIP and FAP were active when the noncompliance occurred, which is precisely the fact pattern

existing in claimant's case. Additionally, good cause for noncompliance is defined as "a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the noncompliant person" (BEM Item 233A, pg 3).

The department's policy includes several specific examples of good cause for noncompliance, one of which is "Client Unfit." This reason is defined as:

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance (BEM Item 233A, pg 4).

Claimant has shown, by irrefutable documentary evidence presented at hearing, he has been disabled since March 2007 (See Finding of Fact #10 above). As such, the department's proposed FAP sanction 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 close claimant's FAP case because good cause for his nonparticipation has been shown (Client Unfit).

Accordingly, the department's action is REVERSED, and this case is returned to the local office for deletion of the proposed FAP sanction. **SO ORDERED.**

/s/

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

Date Signed: May 11, 2010

Date Mailed: May 12, 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.

MBM/db

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