

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: 2009-32520
Issue No: 3029
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2009
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 held on September 9, 2009. Claimant personally appeared and testified.

ISSUE

Did the department correctly take action to terminate claimant's Food Assistance Program (FAP) benefits in March, 2009?

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 a FAP recipient in February, 2009 when the department received notification via a New Hire Hit that he was employed with a local restaurant. (Department's Hearing Summary dated March 13, 2009).

2. Department then mailed a new hire notice to the claimant which he completed and sent back. Department budgeted this employment income for the benefit month of March, 2009 in addition to the UCB claimant was receiving.

3. Claimant called his caseworker on February 26, 2009, and reported he had been fired from his job. Caseworker mailed a Verification Checklist and Verification of Employment (DHS-38) form to the claimant to verify income stopped and the reason for termination.

4. Claimant called his caseworker again on March 3, 2009, and stated that his employer would not complete the DHS-38. Claimant also stated that he was terminated because of an ankle injury and Worker's Compensation claim. Caseworker then faxed DHS-38 directly to the employer.

5. DHS-38 was received back from the employer stating that the claimant was terminated for falsifying company information. Claimant's caseworker then contacted claimant's employer and spoke to Human Resource person who stated that the claimant did have an ankle injury, he was on restrictions, but this was not the reason for termination. Employer did not give any details of the reason for claimant's firing.

6. Claimant requested a hearing on March 12, 2009, and department deleted negative action pending the outcome of the hearing. A hearing was scheduled for April 20, 2009, but the claimant did not report for it. On April 27, 2009, claimant's hearing request was dismissed and the Order of Dismissal was received by Bay County on May 11, 2009.

7. Previous hearing notice was mailed to claimant's address but without his apartment number on it, and claimant testified that he never received it. Another hearing was scheduled by SOAHR for September 9, 2009, but there is no explanation in claimant's record as to what prompted this new scheduling.

8. Department prepared another Hearing Summary for this hearing stating that the claimant did not report for the previous hearing and that an Order of Dismissal was entered previously. However, department had not taken FAP termination action in May, 2009 when the Order of Dismissal was received due to staff absence, and claimant continues to receive FAP benefits as of the date of the hearing.

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).

Department's representative's point out that the claimant did not show up for his previous hearing, and that he therefore does not have a right to this hearing pertaining to FAP action of March, 2009. It does however appear that the claimant was granted another hearing by SOAHR scheduling staff, most likely because his address was missing an apartment number and he brought this to their attention. Claimant's FAP issue will therefore be addressed.

Claimant did have a full time job, from which he was fired in February, 2009.

Departmental policy states:

FAP REFUSING EMPLOYMENT

Non-deferred adult members of FAP households must follow certain work-related requirements in order to receive Food Assistance Program benefits. PEM 233B, p. 2.

Working

- . 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.
- . **Note:** If the job quit, reduction in hours or firing occurred **more** than 30 days **prior** to the application date, no penalty applies. PEM 233B, pp. 2-3.

Claimant states he was fired because of an ankle injury and a Workers Compensation claim. Claimant's employer, while admitting claimant had an ankle injury and was on restrictions, told the department that the claimant was fired for "falsifying company information". Employer would not give any details as to what the claimant specifically did to constitute this alleged offense. This Administrative Law Judge finds that it is possible that an employer would terminate an employee due to their inability to perform a job because of an injury, to avoid any liability, or to retaliate because of a Workers Compensation claim. While this may not have been the case with claimant's employer and the claimant may have indeed been fired for misconduct, evidence presented does cast doubt upon termination reason, especially since the employer was not willing to describe what the claimant actually did to warrant the firing.

Claimant's FAP case has been active through the date of this hearing, as the department never took action to terminate such benefits upon receipt of the Order of Dismissal, which was later apparently rescinded with the scheduling of this hearing. Claimant's FAP benefits have therefore continued without interruption.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly took action to terminate claimant's FAP benefits in March, 2009.

Accordingly, department's action is REVERSED. Department shall continue claimant's FAP benefits without termination if his circumstances still meet FAP eligibility criteria. SO ORDERED.

/s/
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 16, 2009

Date Mailed: September 17, 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.

IR [REDACTED]

cc:

[REDACTED]