

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: 2010-36076
Issue No: 1038
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on June 30, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly sanction Claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related 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 submitted a request for hearing on May 14, 2010.
- (2) The evidentiary record sent to State Office of Administrative Hearings and Rules

by the Department consisted of a Hearing Summary and two copies of the request for hearing. No other documents or evidence were submitted.

(3) The Department representative who appeared for the hearing had no personal knowledge of the case or facts about the Department action.

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 (formerly known as the Family Independence Agency) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In an Administrative Law Hearing on Department of Human Services' matters the Department has the initial burden of presenting evidence to show their action was in accordance with law and policy. Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also, generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself.

The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

- (a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

- (b) Declarant. A "declarant" is a person who makes a statement.
- (c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

Rule 803 Hearsay Exceptions; Availability of Declarant
Immaterial The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

- (6) *Records of regularly conducted activity*. A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In short, the Department must go first at the hearing and present competent evidence that the Department action is in accordance with law and policy. The evidence must be from a live person with personal knowledge of the facts in the case, or documents (prepared by someone with personal knowledge of the facts in the case) which was prepared in the normal course of work. If the Department is not able to do that, any time spent is wasted because an Administrative Law Judge cannot uphold the Department's action.

Unlike the Claimant, the Department has access to policy and instructional information on the hearing process. Each local office has the opportunity to appoint a person to act in the capacity of a hearings coordinator, be a well informed source of information about the hearings process, and assist in helping prepare cases for hearing. For this reason, there is a higher expectation of the Department's preparation for a hearing.

At a hearing the Administrative Law Judge has a duty to develop evidence presented by either party. This is typically done by asking any competent witness for the party questions about documents or statements which the party has presented. When the Department appears at the time and place set for the hearing, with no competent witnesses or documents, this Administrative Law Judge believes it would be prejudicial and contrary to my responsibility of impartial adjudication to try to find evidence FOR the Department to present.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services failed its' initial burden to show they properly sanctioned Claimant's Family Independence Program (FIP) case for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that Claimant's Family Independence Program (FIP) benefits be restored and supplement any benefits she did not receive because of the sanction, which she was otherwise eligible to receive.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 2, 2010

Date Mailed: July 7, 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 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.

GFH/alc

cc:

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