

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF::



Reg No. 201015220
Issue No. 1038/3029
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: November 20, 2010
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 November 20, 2010.

ISSUE

Whether the Department of Human Services (department) properly determined claimant's noncompliance with employment and/or self-sufficiency activities for the Family Independence Program (FIP) and Food Assistance Program (FAP).

FINDINGS OF FACT

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

1. December 2009, claimant and another adult in claimant's were recipients of FIP and FAP. Claimant and the other adult were required to participate in employment-related activities. Department Exhibit A, pg 3.
2. Claimant and the other adult did not participate. Department Exhibit A, pg 3.
3. December 4, 2009, the department sent claimant a Notice of Noncompliance (DHS-2444) setting a triage appointment for December 8, 2009. Department Exhibit A, pgs 1-2.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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).

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Jobs, Education, and Training (JET) program or other employment services unless temporarily deferred or engaged in activities that meet participation requirements. Bridges Eligibility Manual (BEM) 230A; MCL 400.57(f); Rehabilitation Act of 1973 (Section 504); Americans with Disabilities Act of 1990; Michigan Persons with Disabilities Civil Rights Act.

The department requires clients to participate in employment and self-sufficiency related activities and accept employment when offered. The focus is to assist clients in removing barriers so they can participate in activities that lead to self-sufficiency. There are consequences for a client who refuses to participate without good cause. The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance. Depending on case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimal penalty).
- Case closure for a minimum of 3 or 12 months.

Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to :
 - Appear and participate in the JET program or other service provider
 - Complete a family automated screening tool as assigned as the first step in the FSFC process.
 - Develop a family self-sufficiency plan.
 - Comply with activities assigned on the family self-sufficiency plan.
 - Provide legitimate documentation of work participation..
 - Appear for a scheduled appointment or meeting relating to assigned activities.
 - Participation in employment and/or self-sufficiency related activities.
 - Accept a job referral.
 - Appear for a job interview.
 - State orally or in writing a definite attempt not to comply with program requirements.
 - Threatening, physically abusing, or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency related activity.
 - Refusing employment support services if the refusal prevents participation in employment and/or self-sufficiency related activity.

Good cause is 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. A claim of good cause must be verified and documented for member adds and recipients.

The penalty for noncompliance without good cause is FIP closure. Effective April 1, 2007, the following minimum penalties apply:

- For the first occurrence on the FIP case, close the FIP for not less than 3 calendar months unless the client is excused from the noncompliance as noted in first case noncompliance without loss of benefits below.
- For the second occurrence on the FIP case, close the FIP for not less than 3 calendar months.
- For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months.

For a first noncompliance, if the noncompliant client meets or if a phone triage is held with a department manager and/or the JET case manager and a decision regarding the noncompliance is no good cause, the department may offer claimant the opportunity to comply. If claimant accepts the offer to comply, agrees with department's decision of noncompliance without good cause, and completes the required components to be considered in compliance, claimant's noncompliance is excused but not erased. BEM 233A; MCL 400.57(g); 42 USC 607.

There are consequences for a client who refuses to participate in FIP/RAP employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause.

Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following two situations:

Client is active FIP/RAP and FAP and becomes noncompliant with a cash program requirement without good cause.

Client is pending or active FAP only and refuses employment (voluntarily quits a job, is fired or voluntarily reduces hours of employment) without good cause.

Disqualify a FAP group member for noncompliance when all the following exist:

The client was **active** both FIP and FAP on the date of the FIP noncompliance, **and**

The client did not comply with FIP/RAP employment requirements, **and**

The client is subject to a penalty on the FIP/RAP program, **and**

The client is **not** deferred from FAP work requirements (see DEFERRALS in BEM 230B), **and**

The client did not have good cause for the noncompliance

Bridges Eligibility Manual (BEM) 233B; Food Stamp Act of 1977, as amended R400.3610 and 7CFR 272 and 273.5
FIP 1939 PA 280

In this case, department notes indicate that claimant and another adult in the home were supposed to participate in "Employment and Training" (Department Exhibit A, pg 3). The notes do not indicate what specifically claimant was supposed to do and/or failed to do. The record is unclear whether a required triage was held or whether claimant was provided proper written notice that the assistance would be sanctioned. As such, the department has not met its burden of proof and its action can not be upheld. Finding of Fact 1-3.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services has not properly determined that claimant did not participate in work related activities for the Family Independence Program and Food Assistance Program benefits.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's eligibility for FIP and FAP in compliance with department policy and this decision and order.

/s/

Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 21, 2010

Date Mailed: December 21, 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.

JAB/db

cc:

