

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: 2010-4401

Issue No: 3029

Case No:

Load No:

Hearing Date:

November 17, 2009

Branch 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 [REDACTED] on November 17, 2009.

ISSUE

Whether the Department properly terminated Claimant's Food Assistance Program (FAP) case based upon her termination from employment?

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.
- (2) On August 29, 2009, Claimant was terminated by her employer. Claimant, a caregiver, was told that she was fired for arguing in front of residents. However, Claimant believed she was fired for filing a general complaint that the residents were

being mistreated and/or because she called the owner to make a specific complaint about resident mistreatment.

(3) On September 11, 2009, the Department received a Redetermination, DHS-1010, from Claimant which stated that she had been terminated by her employer. The Department conducted a follow up interview with Claimant and made the following notation on the Redetermination – “Terminated- arguing in front of patients – she’ll bring in a written statement from employer.” (Exhibits 1-4)

(4) On September ??, 2009 (unreadable), the Department received an [REDACTED] Notice of Determination which states – “You were discharged from [REDACTED] t on 8/31/09 for other circumstances. You were aware of the policy and have received past warnings. Misconduct in connection with the work has been established. It is found that you were fired for a deliberate disregard of your employers interest. You are disqualified for benefits under MES ACT, Sec. 29(1)(B).” (Exhibit 5)

(5) On September 30, 2009, the Department sent Claimant a Benefit Notice informing her that her Food Assistance review was denied and her benefits would end on September 30, 2009. (Exhibit 6)

(6) On or about October 7, 2009, Claimant’s attorney filed a Protest of Rights and Request for Redetermination (Protest), appealing the UIA Determination. (Exhibit 8)

(7) On October 15, 2009, the Department received Claimant’s hearing request protesting the termination of her FAP benefits and a copy of Claimant’s Protest.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Manual (BRM).

Non-deferred adult members of FAP households must follow certain work-related requirements in order to receive food assistance program benefits. 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. BEM 233B, p. 3

Good cause is a valid reason for failing to participate in employment and/or self-sufficiency-related activities or refusing suitable employment. Investigate and determine

good cause before deciding whether to impose a disqualification. Good cause includes the following:

- The person meets one of the deferral criteria. See “Deferrals” in BEM 230B. BEM 233B, p.

Clients meeting one of the criteria below are temporarily deferred from employment-related activities:

- Defer an applicant or recipient of unemployment benefits. This includes a person whose employment benefits application denial is being appealed. Use an DHS-32, UCB Claims Information Request to verify. BEM 230B, p. 5

In the instant case, the Department caseworker who interviewed Claimant and made the decision to terminate her benefits was not present at the hearing. A Department FIM testified that this type of decision is usually made on the UIA Determination and no further investigation is done, but did point out that the caseworker interviewed Claimant and made a notation about being terminated for arguing in front of residents. With that said, it is difficult to discern whether the Department made any type of good cause determination in this matter. Nonetheless, the disqualification only applies to non-deferred adults. Claimant is deferred based on her application for unemployment benefits and her subsequent appeal of the UIA Determination.

With the above said, I do not find that the Department established that it acted in accordance with policy in terminating Claimant’s FAP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find that the Department acted in accordance with policy in terminating Claimant’s FAP case.

Accordingly, the Department's FAP eligibility determination is REVERSED, it is SO ORDERED. The Department shall:

- (1) Process Claimant's Redetermination retroactive to the closure date.
- (2) Notify Claimant in writing of the Department's revised determination.
- (3) Claimant retains the right to request a hearing if she would like to contest the Department's revised determination.
- (4) Issue Claimant supplemental benefits she is entitled to, if any.

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

Date Signed: November 19, 2009

Date Mailed: November 20, 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.

SMB/db

cc:

