

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 201119691
Issue No: 3016, 1002, 1038
Case No: [REDACTED]

Hearing Date:
May 11, 2011
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on September 17, 2009. After due notice, a telephone hearing was held on Wednesday, May 11, 2011.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) eligibility?

FINDINGS OF FACT

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

1. The Claimant applied for Family Independence Program (FIP) and Food Assistance Program (FAP) benefits on July 17, 2009.
2. On August 3, 2009, the Department referred the Claimant to the Jobs, Education, and Training (JET) program as a condition of receiving FIP benefits.
3. The Claimant started employment on August 21, 2009, and she was working 10 to 15 hours per week.

4. The Claimant was referred to community service on August 3, 2009.
5. On September 10, 2009, the Department determined that the Claimant was noncompliant with the JET program for failing to complete her assignment through employment, community service, or job searches.
6. On September 11, 2009, the Department denied the Claimant's application for Family Independence Program (FIP) benefits for noncompliance with the JET program.
7. On September 11, 2009, the Department denied the Claimant's application for Food Assistance Program (FAP) benefits because the Claimant does not meet the requirements of the Student Status policy (BEM 245).
8. The Department received the Claimant's request for a hearing on September 17, 2009, protesting the Department's denial of Food Assistance Program (FAP) and Family Independence Program (FIP) benefits.

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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by DHS when the client applies for cash assistance. Jobs, Education and Training (JET) program requirements, education and training opportunities, and assessments will be covered by the JET case manager when a mandatory JET participant is referred at application. PEM 229, p. 1.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Jobs, Education and Training (JET) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. JET is a program administered by the Michigan Department of Labor and Economic Growth (DLEG) through the Michigan Works Agencies (MWAs). The JET program serves employers and job seekers for employers to have skilled workers and

job seekers to obtain jobs that provide economic self-sufficiency. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. PEM 230A, p. 1.

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

- Failing or refusing to:
 - Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
 - Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
 - Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP).
 - Provide legitimate documentation of work participation.
 - Appear for a scheduled appointment or meeting related to assigned activities.
 - Participate in employment and/or self-sufficiency-related activities.
 - Accept a job referral.
 - Complete a job application.
 - Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent 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 an employment and/or self-sufficiency-related activity. PEM 233A, pp. 1-2.

The Department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. PEM 233A, p. 9

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. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. PEM 233A, p. 4, 5

Good cause should be determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. PEM 233A, p. 9

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.
- The penalty counter also begins April 1, 2007 regardless of the previous number of noncompliance penalties. PEM, Item 233A.

Noncompliance, without good cause, with employment requirements for FIP/RAP(SEE PEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. PEM 233b, p. 1 The FAP group member should be disqualified 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, and
- The client did not have good cause for the noncompliance. PEM 233B, p.2

The Department should budget the Last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the first two noncompliances or 12 months for the third and subsequent noncompliances) after the FIP case closes for employment and/or self sufficiency-related noncompliance. The Last FIP grant amount is the grant amount the client received immediately before the FIP case closed.

In this case, the Claimant applied for Family Independence Program (FIP) benefits on July 17, 2009, and the Department referred the Claimant to the JET program as a condition of receiving FIP benefits. The Department referred the Claimant to community service on August 3, 2009. On September 10, 2009, the Department determined that the Claimant was noncompliant with the JET program for failing to complete her assignment through employment, community service, or job searches.

Non-compliance with employment or self-sufficiency activities may result in denial of benefits. Non-compliance of applicants includes failing or refusing to appear and participate with the JET program. Non-compliance while an application for FIP benefits is pending results in group ineligibility. BEM 233A.

Since the Claimant failed to comply with her JET assignment before the Department approved her for FIP benefits, the Department was not required to conduct a triage meeting. No evidence was presented during the hearing showing that the Claimant had ever completed her JET assignment, and the Claimant has not established good cause. Therefore, the Department has established that it properly denied the Claimant's application for FIP benefits for noncompliance with the JET program.

The Department will certify program approval or denial of an application for the Family Independence Program (FIP) within 45 days. BAM 115. The Department's failure to approve or deny FIP benefits within 45 days does not relieve the Claimant of her duty to establish her eligibility for benefits. In this case, the Department has established that

the Claimant was noncompliant with the JET program before her approval for FIP benefits. Therefore, the Department has established that it properly denied the Claimant's Family Independence Program (FIP) application.

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Department of Human Services (DHS) has a unique opportunity to assist families in becoming strong, viable, participative members of the community. By involving the adult members of the household in employment-related activities, we help restore self-confidence and a sense of self-worth. These are cornerstones to building strong, self-reliant families. BEM 230B.

The goal of the Food Assistance Program (FAP) is to ensure sound nutrition among children and adults. In addition, the goal of our employment-related policies for FAP households is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training. BEM 230B.

Persons employed, self-employed or in work study an average of 30 hours or more per week over the benefit period or earning on average the federal minimum wage times 30 hours per week are not required to participate in any further employment-related activities. This includes migrant or seasonal farm workers with an employer or crew chief contract/agreement to begin work within 30 days. BEM 230B.

A person enrolled in a post-secondary education program may be in student status, as defined in BEM 245, Student Status. BEM 230B.

A person enrolled in a post-secondary education program may be in student status, as defined in this item. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245.

A person is in student status if he is:

- Age 18 through 49: and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.

- Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

In order for a person in student status to be eligible, they must meet one of the following criteria:

- Receiving FIP.
- Enrolled in an institution of higher education as a result of participation in:
 - Approved employment -related activities (See BEM 230B).
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year. To qualify under this provision the student must be approved for work study during the school term and anticipate actually working during that time. The exemption:
 - Starts the month the school term begins or the month work study is approved, whichever is later.
 - Continues until the end of the month in which the school term ends, or when you become aware that the student has refused a work-study assignment.
 - Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.
- Providing more than half of the physical care of a group member under the age of six.

- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent. BEM 245.

For the care of a child under age six, consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. When determining the availability of adequate child care for a child six through 11, another person in the home, over 18, need not be a FAP group member to provide care. The person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245.

A person who is in student status and does not meet the criteria in BEM 245 is a non group member. BEM 212.

In this case, the Claimant reported to the Department that she was a full time student, and that she was working 10 to 15 hours per week. A full time student must work at least 20 hours per week in order to maintain eligibility for the Food Assistance Program (FAP). The Claimant is not involved in a work study program, and was not approved for FIP benefits.

The Claimant does not deny that she was not working less than 20 hours per week, but testified that the requirement does not apply to her since she is not a full time student.

The Department determined the Claimant's eligibility for the Food Assistance Program (FAP) based on the information and verification documents submitted by the Claimant. The Claimant failed to establish that she was not enrolled half-time or more in regular curriculum at a post-secondary educational program.

The Department will process Food Assistance Program (FAP) applications as quickly as possible, with priority to the earliest application date. BAM 115. Although the Department failed to approve or deny the Claimant's FAP in a timely manner, this does not relieve the Claimant of her duty to establish eligibility to receive benefits. In this case, the Claimant is not eligible to receive FAP benefits because she does not meet the requirements of the Student Status policy (BEM 245). The Claimant is potentially

eligible under student status, but she failed to comply with the requirements of the JET program.

Based on the evidence and testimony available during the hearing, the Department has established that the Claimant is not eligible for Food Assistance Program (FAP) benefits because she does not meet the Student Status policy (BEM 245).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) eligibility.

The Department's Family Independence Program (FIP) and Food Assistance Program (FAP) eligibility determination is AFFIRMED. It is SO ORDERED.

/s/ _____
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 24, 2011

Date Mailed: May 25, 2011

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.

KS/tg

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cc:

