

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-23055
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: April 6, 2011
DHS County: Macomb (50-20)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on April 6, 2011. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether DHS terminated Claimant from the Family Independence Program (FIP) in accordance with its own policies and procedures?

FINDINGS OF FACT

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

1. On August 1, 2009, DHS awarded FIP benefits to Claimant for herself and her daughter.
2. On or before November 19, 2010, DHS enrolled Claimant in the JET program.
3. On January 3, 2011, from 1:00 p.m.-6:30 p.m., Claimant completed two in-person job applications and two other job applications.
4. On January 27, 2011, DHS issued a Notice of Noncompliance stating that Claimant was noncompliant on January 3 and also on January 14, 2011, and further stating Claimant had "No participation in required activity."

5. DHS committed error when it determined that on January 3, 2011, Claimant did not participate in required activity.
6. On February 10, 2011, DHS terminated Claimant's FIP benefits effective February 28, 2011.
7. On February 18, 2011, Claimant submitted a Request for a Hearing to DHS.

CONCLUSIONS OF LAW

FIP was established by the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601 *et seq.* DHS administers the FIP program pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3101-400.3131. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

The DHS manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by the U.S. Congress or the Michigan State Legislature, they constitute legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case. After setting forth what the applicable policies are, I will examine whether they were in fact followed in this case.

DHS in its Hearing Summary cited BEM 230A, "Employment and/or Self-Sufficiency Related Activities: FIP/RAP [Refugee Assistance Program] Cash," and BEM 233A, "Failure to meet Employment and/or Self-Sufficiency-Related Requirements: FIP," as legal authority for its action.

BEM 230A follows Federal and State law, which require that every work-eligible individual must participate in the JET Program or other work-related activities unless the person is temporarily deferred or engaged in other activities that meet participation requirements. BEM 230A.

I reviewed BEM 230A in its entirety, and I do not find that this Item provides guidance on the specific issue before me. I turn next to the manual penalty Item, BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP."

BEM 233A begins with a significant statement of the Department's Philosophy:

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. **Our focus is to assist clients in removing barriers so they can participate in**

activities which lead to self-sufficiency. However, 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.**

Noncompliance may be an indicator of possible disabilities. **Consider further exploration of any barriers.** *Id.*, p. 1 (emphasis added).

I find that DHS makes it clear in these paragraphs that the goal is to identify and remove barriers to employment, and the DHS goal is *not* to penalize customers for generalized failures and mistakes. I also read this section to mean that if the customer shows good cause for their action or failure to act, that action or failure to act will be excused and will not be held against them and no penalties will be imposed.

I have examined all of the evidence and the testimony in this case as a whole. Considering first the date of January 3, 2011, I find that DHS is incorrect when it concluded that Claimant failed to participate on that date. I find that the Job Search Log adequately documents Claimant's job search activities, consisting of applying for four jobs. I find and determine that this meets the program requirement. I find that DHS' testimony regarding the truthfulness of one of these applications is insufficient to persuade me that Claimant's job search did not occur. I have reviewed DHS' evidence on this question and present my analysis of this evidence as follows.

Claimant's Job Search Log entry for January 3, 2011, is part of a two-page log for the week of January 3-7, 2011. On the section for January 3, 2011, Claimant wrote that she applied in person at [REDACTED] and the contact person there was [REDACTED]. Second, there is a handwritten note next to the name [REDACTED], which reads, "No [REDACTED]." Then, for the January 4 section of the log, where Claimant wrote the contact person's name [REDACTED], there is a second handwritten note stating, "No [REDACTED]." Third, at the end of the log on the second page at the bottom, there is a handwritten note which states, "Falsified job log." Claimant testified she did not know why [REDACTED] were unidentifiable by phone.

I have reviewed this evidence and I am not persuaded that it is clear and convincing evidence that on January 3, 2011, Claimant failed to participate in required activity. First, the handwritten notes are undated and unsigned, and they cannot be attributable to any person or persons. They could have been written by anyone. Second, the note of January 3, 2011, does not indicate who at DHS made the phone call, when it was made, and who DHS spoke to in the telephone call. Third, if I accept DHS' testimony that the phone call regarding January 3, 2011, was made on March 4, 2011, two months

later, then I cannot disregard the possibility that two months later a person by the name of [REDACTED] is no longer employed at [REDACTED]. If [REDACTED] is no longer employed there, then the information received could be true and there still could have been a person named [REDACTED] at [REDACTED] on January 3, 2011.

Although January 3, 2011, is the first “falsification,” I find and determine that the same defects exist with regard to the January 4, 2011, “falsification” as well. Accordingly, I find that DHS’ evidence of failure to participate on January 3, 2011, is insufficient and I do not accept it.

Therefore, regarding DHS’ assertion that Claimant was noncompliant on January 3, 2011, I find it is not proved by clear and convincing evidence. I find and conclude that on January 3, 2011, Claimant fully participated in work-related activities and DHS erred in concluding to the contrary. I further find and conclude that a remedy is required in this case and Claimant shall be reinstated in the JET program.

However, I will first address DHS’ second assertion in the Notice of Noncompliance, that Claimant was noncompliant on January 14, 2011. At the hearing Claimant gave credible and un rebutted testimony that her daughter had pinkeye and could not be taken to day care. I determine this to be a day care problem, because I understand from Claimant’s testimony that Claimant did not have backup care for occasions when her child is sick. I find this is an employment barrier which DHS failed to identify.

Accordingly, I find and determine that lack of child care is good cause for failing to participate in employment-related activities. I find and conclude that DHS erred when it decided that on January 14, 2011, Claimant did not have good cause for her failure to appear. I find and conclude that DHS in this situation had a duty to identify and address Claimant’s barrier to employment.

I find and determine that DHS error occurred, because the goals of the agency in BEM 233A were not met in this case. DHS’ official philosophy and focus is to assist clients in removing barriers to employment and self-sufficiency. DHS incorrectly found no good cause and, therefore, failed to identify what, if any, barriers to employment and self-sufficiency existed on January 14, 2011.

I find and conclude that the testimony and the evidence indicate that on January 14, 2011, Claimant had a genuine barrier to employment, i.e., lack of child care.

I, therefore, REVERSE the Department’s action in this case and return this case to DHS to reinstate Claimant’s benefits effective March 1, 2011, or other appropriate date. IT IS ORDERED that Claimant’s benefits are reinstated, any penalty imposed by DHS shall be rescinded, and Claimant’s benefits shall be supplemented in accordance with DHS

policies and procedures. I find and determine that unless and until DHS can identify a specific date of noncompliance and specify the noncompliant act or failure to act, Claimant is entitled to full FIP benefits.

All steps shall be taken in accordance with DHS policies and procedures and with the requirements of this decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES the Department's termination of Claimant's FIP benefits. IT IS ORDERED THAT DHS shall reinstate Claimant's FIP benefits as of March 1, 2011, or other appropriate date, rescind any penalties imposed upon her for noncompliance with the JET program, and supplement and continue Claimant's FIP benefits. IT IS FURTHER ORDERED that Claimant shall be permitted to reenroll in the JET program. All steps taken by DHS shall be in accordance with this opinion and DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 12, 2011

Date Mailed: April 13, 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 90 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

JL/pf

cc:

