

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

IN THE MATTER OF:



Reg. No.: 2011-23112
Issue Nos.: 1038, 2000, 3029
Case No.: [REDACTED]
Hearing Date: April 7, 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 7, 2011. Claimant appeared and testified. [REDACTED], appeared and testified for DHS.

ISSUE

Whether DHS terminated Claimant from the Family Independence Program (FIP), the Food Assistance Program, (FAP), and the Medical Assistance (MA) program 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. In 2010, Claimant received FIP, FAP and MA for a family of four persons.
2. On or before November 15, 2010, DHS enrolled Claimant in the JET program.
3. On November 16, 2010, DHS sent Claimant an MA Redetermination Application requesting updated information about her income and employment.
4. Claimant did not receive the November 16, 2010, MA Redetermination Application.

5. On December 6, 2010, DHS issued a FIP Notice of Noncompliance to Claimant, stating that Claimant was noncompliant on December 1, 2010, for “No participation in required activity.”
6. The December 6, 2010, Notice of Noncompliance stated that unless there was good cause for the noncompliance, Claimant would receive a first-time penalty. Claimant’s penalty was to be the closure of her FIP benefits for a minimum of three months.
7. On December 7, 2010, DHS issued a FIP Notice of Noncompliance to Claimant, stating that Claimant was noncompliant on a future date, December 16, 2010, for “No participation in required activity.”
8. The December 7, 2010, Notice of Noncompliance stated that unless there was good cause for the noncompliance, Claimant would receive a first-time penalty. Claimant’s penalty was to be the closure of her FIP benefits for a minimum of three months.
9. On December 16, 2010, DHS did not make a determination regarding good cause at the scheduled time of Claimant’s triage.
10. DHS committed error when it determined that on December 1, 2010, Claimant did not participate in required activity.
11. DHS committed error when it issued a Notice of Noncompliance on December 7, 2010, stating a noncompliance date nine days after the date of the Notice of Noncompliance.
12. Effective January 31, 2011, DHS closed Claimant’s MA benefits.
13. Effective February 1, 2011, DHS imposed FIP and FAP sanctions upon Claimant.
14. On January 31, 2011, Claimant filed a Request for a Hearing with DHS.
15. At the Administrative Hearing held in this matter on April 7, 2011, DHS offered to reinstate Claimant’s MA benefits back to the date of the closure, reprocess her Redetermination Application, and provide MA supplements and continuing benefits as appropriate.
16. In response to DHS’ offer, Claimant testified she was satisfied with DHS’ action with regard to her MA benefits, and she no longer wished to continue the Administrative Hearing on the MA issue.

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 (MACR) 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.

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers the FAP program pursuant to MCL 400.10 *et seq.* and MACR 400.3001-400.3015. DHS' policies are found in BAM, BEM and RFT. *Id.*

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the U.S. Code of Federal Regulations. DHS administers MA pursuant to MCL 400.10 *et seq.* and MCL 400.105. DHS policies are found in BAM, BEM and RFT. *Id.*

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. First I will address DHS' decision that Claimant was noncompliant with work-related activities and is subject to a second-time penalty in the FIP and FAP programs.

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 Jobs, Education and Training (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's 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 this paragraph 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 the first alleged noncompliance date of December 1, 2010, I find that DHS erred when it concluded that Claimant failed to participate on that date. I find nothing in the record to show what the required activity was, and I find nothing to show whether or not she participated on December 1.

The testimony at the hearing was that December 1 was "just the date [REDACTED] put their notes in the system." I reject administrative practice as a basis for a noncompliance date, and I find that BEM 233A requires DHS to identify the date the noncompliance occurred so that the stated DHS purpose of removing employment and self-sufficiency barriers can be accomplished. I find and determine that BEM 233A was not observed in this case and I reverse DHS' action.

DHS' action with regard to the second alleged noncompliance date, December 16, 2010, is, on its face, baseless because it states that Claimant failed to participate on a date that is nine days into the future. I refuse to rely on a document that predicts the future actions of a person in this manner. I reject this document as evidence of noncompliance and find that it has no credibility whatsoever.

Therefore, regarding DHS' assertions that Claimant was noncompliant on December 1 and December 16, 2010, I find that DHS has not established by clear and convincing

evidence that Claimant was noncompliant on either date. I find and conclude that DHS erred in finding that Claimant was noncompliant on either occasion and in assessing FIP and FAP penalties against Claimant. I shall order the penalties to be removed and that Claimant shall be made whole.

In conclusion, as to Claimant's FIP and FAP benefits, based on the findings of fact and conclusions of law above, I find and determine that DHS erred in failing to follow the requirements of BEM 233A. I find and conclude that DHS has a duty under BEM 233A to identify and address Claimant's barriers to employment and failed to do so.

I, therefore, REVERSE the Department's action regarding FIP and FAP benefits, and remand this case to DHS to reinstate full FIP and FAP benefits to Claimant effective February 1, 2011, or other appropriate date. IT IS ORDERED that Claimant's FIP and FAP benefits are reinstated, all penalties imposed by DHS are rescinded, and Claimant's benefits shall be supplemented retroactively in accordance with DHS policies and procedures. IT IS FURTHER ORDERED that Claimant shall be reenrolled in the JET program as a requirement of receiving such benefits. All of the necessary steps shall be taken in accordance with DHS policies and procedures and with the requirements of this decision.

Turning now to Claimant's MA benefits, BAM Item 600, "Hearings," provides clients the right to contest any DHS decision affecting eligibility or benefit levels whenever they believe the decision is illegal. DHS provides an Administrative Hearing to review the decision and determine if it is appropriate. DHS policy includes procedures to meet the minimal requirements for a fair hearing. Efforts to clarify and resolve the client's concerns start when DHS receives a hearing request and continue through the day of the hearing.

In this case, the parties stipulated to a settlement agreement whereby DHS will reinstate Claimant's MA case, provide her with a Redetermination Application and reinstate appropriate MA benefits back to the date of closure. As the parties have reached an agreement as to Claimant's MA benefits, it is not necessary for the Administrative Law Judge to decide the MA issue presented in this case.

In conclusion, as to Claimant's MA benefits, based on the findings of fact, the conclusions of law, and the stipulated settlement agreement of the parties, IT IS HEREBY ORDERED that DHS shall reinstate Claimant's MA benefits back to the date of the closure, reprocess her Redetermination Application, and provide appropriate retroactive benefits, all in accordance with DHS policy and procedure.

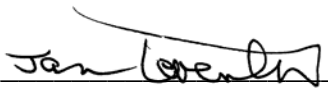
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, PARTIALLY REVERSES and PARTIALLY RESOLVES the issues in this case.

First, I REVERSE the Department's penalties assessed upon Claimant in the FIP and FAP programs. IT IS ORDERED THAT DHS shall reinstate Claimant's FIP and FAP benefits as of February 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 and FAP benefits as appropriate. IT IS FURTHER ORDERED that Claimant shall be reenrolled in the JET program.

IT IS FURTHER ORDERED that, based on the stipulation of the parties, Claimant's MA benefits shall be reinstated as of the date they were closed, she shall be permitted to file a Redetermination Application, and she shall receive all retroactive and ongoing MA benefits to which she is entitled.

IT IS FURTHER ORDERED that 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:

