

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.: 2011-23429
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: April 7, 2011
DHS County: Macomb (50-12)

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) 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 benefits from DHS for a family of four.
2. On or before June 28, 2010, DHS enrolled Claimant in the Jobs, Education and Training (JET) program.
3. On November 19, 2010, DHS did not assign Claimant to participate in any work-related or self-sufficiency activity.
4. On November 19, 2010, DHS issued a Notice of Noncompliance stating that Claimant was noncompliant on November 19, 2010, and further stating Claimant had "No participation in required activity."

5. DHS committed error when it determined that Claimant did not participate in required activity on November 19, 2010, because DHS did not assign Claimant to work-related activity on that date.
6. On December 10, 2011, DHS imposed a three-month penalty and suspension of Claimant's FIP benefits beginning January 1, 2011.
7. On December 20, 2010, 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 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. My inquiry is focused on the date of November 19, 2010, because that is the date DHS claims that Claimant was noncompliant. This date can be found on the Agency's Notice of Noncompliance, which states:

A meeting has been scheduled to give you an opportunity to report and verify your reasons for noncompliance... It is your responsibility to report and verify reasons for your actions. This is your opportunity to claim barriers that make it hard for you to work. Department Exhibit 1, p. 10.

I find nothing in the record to establish what DHS assigned Claimant to do on November 19, and I find nothing that documents she failed to do it. Based on this record, I can find only that DHS erred in this case, in that it failed to announce on what date the noncompliance occurred, and then, what actually happened at the time.

I find and conclude that DHS has failed to establish by clear and convincing evidence there was noncompliance in this case. Indeed, Claimant's testimony at the hearing is that she had finished the JET appointments by October 31, 2010, and DHS never assigned her to any work-related activity on November 19, 2010.

I find and decide that this procedure fails to fulfill the duty of DHS under BEM 233A to identify and resolve barriers to employment and self-sufficiency. I find that the purpose of BEM 233A has not been achieved in this case and I must reverse DHS and provide a remedy to Claimant.

In conclusion, based on the findings of fact and conclusions of law above, I find that DHS was incorrect when it concluded that Claimant was noncompliant on November 19, 2010. I REVERSE the Agency's action in this case, and order that Claimant's FIP benefits shall be reinstated, the penalty rescinded, and the negative action deleted, and DHS shall provide Claimant with any supplemental, retroactive benefits to which she is entitled.

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 penalty of Claimant's FIP benefits. IT IS ORDERED that DHS shall reinstate Claimant's FIP benefits effective January 1, 2011, or other appropriate date, DHS shall rescind all penalties imposed on Claimant, DHS shall delete any negative case actions taken, and DHS shall provide to Claimant all appropriate supplemental, retroactive benefits. IT IS FURTHER ORDERED that DHS shall reenroll Claimant in the JET program as one of the requirements for receiving FIP benefits.

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:

