

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-24683
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: May 11, 2011
DHS County: Oakland (63-03)

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 May 11, 2011. Claimant appeared and testified. [REDACTED]

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

ISSUE

Whether DHS terminated Claimant's Family Independence Program (FIP) benefits 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 and participated in the JET work requirement program.
2. On April 6, 2010, DHS issued a Notice of Noncompliance stating Claimant was noncompliant on April 6, 2010, and that Claimant had "No participation in required activity."
3. DHS presented no proof that a finding of no good cause was made with regard to the April 6, 2010, allegation.

4. DHS committed error when it determined that Claimant did not participate in required activity on April 6, 2010, because DHS failed to establish what was required of Claimant on that date, whether she performed it, and if she did not, whether there was good cause to excuse her nonperformance.
5. On February 10, 2011, DHS issued a Notice of Noncompliance stating Claimant was noncompliant on February 7, 2011, and that Claimant had “No participation in required activity.”
6. DHS presented no proof that a finding of no good cause was made with regard to the February 10, 201, allegation.
7. DHS committed error when it determined that Claimant did not participate in required activity on February 7, 2011, because DHS failed to establish what was required of Claimant on that date, whether she performed it, and if she did not, whether there was good cause to excuse her nonperformance.
8. Effective April 1, 2011, DHS imposed a penalty of a three-month termination of Claimant’s FIP benefits. DHS requires Claimant to reapply for FIP in June 2011 if she wishes to receive benefits in July 2011.
9. On March 14, 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 FIP 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.

I find that 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,” are the DHS policies that apply in

this case. 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; BEM 233A.

I reviewed BEM 230A in its entirety, and I find that this Item does not provide 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 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. My inquiry is focused on the dates of April 6, 2010, and February 7, 2011, because these are the two dates DHS claims Claimant was noncompliant. I am addressing both dates in the same discussion because I find that the same error occurred on both occasions.

On both occasions, DHS sent a 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.

I have examined all of the evidence and testimony in this case as a whole. I find nothing in the record to establish what DHS assigned Claimant to do on either of the

alleged dates of noncompliance, and I find nothing that documents that she failed to do it on either occasion. Based on the record before me, I can find only that DHS erred in this case in that it failed to announce what Claimant's requirements were on these dates and then, what actually occurred.

I find and conclude that DHS has failed to establish by clear and convincing evidence that there was noncompliance in this case. I find and decide that the procedure DHS used in this case fails to fulfill the duty of DHS under BEM 233A, i.e., to identify and resolve barriers to employment and self-sufficiency. I find that the purpose of BEM 233A has not been observed 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 erred when it concluded that Claimant was noncompliant on April 6, 2010, and February 7, 2011. I REVERSE DHS' action in this case and order that Claimant's FIP benefits shall be reinstated, the penalty rescinded, the negative action deleted, and DHS shall provide Claimant with any supplemental retroactive benefits to which she is entitled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES DHS' termination of Claimant's FIP benefits. IT IS ORDERED that DHS shall reinstate Claimant's FIP benefits effective April 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 FIP benefits. IT IS FURTHER ORDERED that DHS shall re-enroll 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: May 12, 2011

2011-24683/JL

Date Mailed: May 16, 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.

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:

