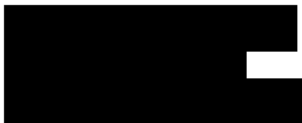


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-31139
Issue Nos.: 1038, 3029
Case No.: [REDACTED]
Hearing Date: May 25, 2011
DHS County: Wayne (82-41)

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 25, 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) and the Food Assistance Program (FAP) in accordance with its 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 February 2010, DHS provided FIP and FAP benefits to Claimant.
2. DHS required Claimant to participate in the Jobs, Education and Training (JET) program in order to receive FIP and FAP benefits.
3. On March 21, 2011, Claimant was not assigned to JET activity.
4. On March 29, 2011, DHS issued a Notice of Noncompliance stating that on March 21, 2011, Claimant was not in compliance with the JET program.

5. On April 7, 2011, DHS issued a Notice of Case Action terminating Claimant's FIP and FAP benefits effective May 1, 2011.
6. On April 21, 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 (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 FAP pursuant to MCL 400.10 *et seq.* and MACR 400.3001-400.3015. DHS' policies are found in BAM, BEM and RFT. *Id.*

BAM, BEM and RFT 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, BEM 230A, "Employment and/or Self-Sufficiency-Related Activities: FIP/RAP [Refugee Assistance Program] Cash," follows Federal and State law, which requires that every work-eligible individual must participate in the JET Program or other work-related activity unless the person is temporarily deferred or engaged in other activities that meet participation requirements. BEM 230A.

Next, BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP," is the second legal authority which applies to DHS' action in this case.

Third, BEM 233B, "Failure to Meet Employment Requirements: FAP," also applies in this case, in that DHS' action terminates Claimant's FAP as well as FIP benefits. The BEM 233A and BEM 233B legal requirements are essentially the same as applied to this case.

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 is very 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.

My inquiry is focused on the date of March 21, 2011, because that is the date DHS claims that Claimant was noncompliant. This date can be found in DHS' 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. 8.

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 March 21, 2011, and I find nothing that documents that she failed to do it. Indeed, DHS submitted no records whatsoever regarding Claimant's participation in JET. Based on this record, I find and determine that DHS erred in this case in that it failed to announce to Claimant a verifiable date that the noncompliance occurred and what actually happened at the time.

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 followed in this case failed to fulfill the duty of DHS under BEM 233A and 233B to identify and resolve barriers to employment and self-sufficiency. I find that the purpose of BEM 233A has not been fulfilled 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 March 21, 2011. I REVERSE the Agency's action in this case, and order that Claimant's FIP and FAP benefits shall be reinstated, DHS shall provide Claimant with any supplemental, retroactive benefits to which she is entitled, DHS shall delete any penalties imposed on Claimant, and Claimant shall be allowed to re-enroll in the JET program.

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 May 1, 2011 termination of Claimant's FIP and FAP benefits. IT IS ORDERED that DHS shall reinstate Claimant's FIP and FAP benefits, 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 re-enroll Claimant in the JET program as one of the requirements for receiving FIP and FAP 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: June 2, 2011

Date Mailed: June 8, 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:

