

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-32888
Issue Nos.: 1038, 3029
Case No.: [REDACTED]
Hearing Date: June 9, 2011
DHS County: Wayne (82-19)

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 June 9, 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 Food Assistance Program (FAP) in accordance with policy and procedure?

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 2011, DHS provided FIP and FAP benefits to Claimant.
2. DHS required group member, [REDACTED], to participate in JET in order to receive FIP and FAP benefits.
3. On February 23, 2011, [REDACTED] was not assigned to a JET activity.
4. On February 23, 2011, the JET agency requested that DHS schedule a triage conference regarding nonparticipation.

5. On April 5, 2011, DHS issued a Notice of Noncompliance stating that on February 23, 2011, [REDACTED] was not in compliance with the JET program.
6. On April 15, 2011, DHS issued a Notice of Case Action informing Claimant that effective May 1, 2011, DHS would terminate Claimant's FIP benefits and reduce her FAP benefits to \$367 per month.
7. On May 5, 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 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 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 activities 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," also governs DHS' action in 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.

There is also a third manual item applicable in this case, BEM 233B, "Failure to Meet Employment Requirements: FAP." BEM 233B imposes the same JET requirement upon clients receiving FAP benefits as BEM 233A requires for clients receiving FIP benefits.

My inquiry is focused on the date of February 23, 2011, because that is the date DHS claims that a family group member, [REDACTED] was noncompliant. I have examined all of the evidence and testimony in this case as a whole. I find no evidence in the record to establish that DHS assigned [REDACTED] to do anything on February 23, 2011, and I find nothing that documents that he failed to do it. Indeed, DHS' Hearing Summary contains no information whatsoever, other than a summary statement that "custoer (sic) failed to attend workfirst (sic)." DHS' testimony at the hearing was that February 23, 2011, was an administrative date on which JET referred the case to DHS to schedule a triage meeting to determine if good cause existed.

Based on the record before me, 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 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 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 a group member was noncompliant on February 23, 2011. I REVERSE DHS' 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's group members, and Claimant's group members shall be allowed to re-enroll in the JET program if otherwise appropriate.

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 DHS' May 1, 2011 termination of Claimant's FIP benefits and the reduction of her 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's group member, [REDACTED], in the JET program if it otherwise appropriate.

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 14, 2011

Date Mailed: June 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.

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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:

