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

IN THE MATTER O	F:

Reg. No. Issue No. Case No. Hearing Date: 201134311 1038 June 15, 2011 Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the c laimant's request for a hearing. After due notice, a telephone hearing was held on June 15, 2011. The claimant appeared and testified; als o appeared and testified on behalf of Department of Human Services (DHS), Claimant appeared and testified. Claimant. On behalf of testified.

ISSUE

Whether DHS properly terminated Claimant 's Family Independence Program (FIP) benefits based on a disqualification against Claimant and her living together partner.

FINDINGS OF FACT

The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. Claimant was an ongoing FIP benefit recipient.
- Claimant was part of a FIP benefit group that included her living together partner (LTP).
- 3. Claimant and her LTP were found noncompliant with JET participation in 2/2011.
- Following the noncompliance, DHS offered Claimant and her LTP the opportunity to return to JET without a disqualif ication because the nonc ompliance was the first each for Claimant and her LTP.
- 5. Claimant and her LTP agreed to the DHS offer.

- 6. Subsequent to the return to JE T, Claimant and/or her LTP began receiving employment income.
- 7. On 4/29/11, DHS began budgeting the employment income and determined Claimant was ineligible for FIP benefits effective 6/2011 based on two noncompliance findings (one each for Claimant and her LTP).
- 8. DHS also assessed a disqualificatio n penalty to Claim ant's FAP benefits resulting in an unspecified FAP benefit reduction.
- 9. On 5/4/11, Claimant r equested a hearing to dispute the FIP b enefit termination and FAP benefit reduction based on noncompliance with JET participation.

CONCLUSIONS OF LAW

The Food Assistanc e Program (formerly known as the Food Stamp Program) is established by the Food Stam p Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Feder al Regulations (CFR). DHS (formerly known as the Fam ily Independence Agency) administers the FAP p ursuant to Michigan Compiled Laws 400. 10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconc iliation Act of 1996, P ublic Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. DHS polic ies are found in the Bridges Ad ministrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 4/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <u>http://www.mfia.state.mi.us/olmweb/ex/html/</u>.

DHS requires clients to participat e in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A at 1. Federal and state laws require each work eligible individual (WEI) in a FIP gr oup to participate in Jobs, Education and Training (JET) Program or other employment-related activity unles s temporarily deferred or engaged in activities that m eet participation requirements. *Id.* These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

JET is a program administer red by the Michigan Depart tment of Energy, Labor and Economic Growth through the Mi chigan Works! Agencies. *Id*. The JET program serves employers and job seekers for remployers to have skilled workers and job seekers to o obtain jobs that provide economic self-sufficiency. *Id*.

The WEI is consider ed non-compliant for failing or refusing to appear an diparticipate with JET or other employment service provider. *Id* at 2. Note that DHS regulations do not objectively define, "failure or refusing to appear and participate with JET". Thus, it is left to interpretation how many hours of JET absence constitute a failure to participate.

In the present case, it was not disput ed that Claimant and her LTP were found noncompliant with JET participation. It was also not disputed that DHS offered Claimant and LTP an opportunity to return to JET wit hout a disqualification because it was the first noncompliance for Claimant and her LTP. When DHS made the offer to Claimant , DHS presumed that the offer was in compliance with their regulations.

The penalty for noncomplianc e without good c ause is FIP closure. BEM 233A at 6. Effective April 1, 2007, the following minimum penalties apply:

- For the first occurrence on the FIP case, DHS is to close the FIP for not less than three calendar months unle ss the client is excused from the noncompliance as noted in First Case Noncompliance Without Loss of Benefits below.
- For the second occurrence on the FIP case , close the FIP for not less than three calendar months.
- For the third and subs equent occurrence on the FIP case, close the FIP for not less than 12 calendar months. *Id*.

The testifying DHS s pecialist expressed s urprise when Claimant's FIP benefits wer e subsequently terminated when Claimant's em ployment income was factored. The specialist anticipated FIP benefit termination (or conversion to Extended FIP) based on employment income. Instead the FIP benefit its ended based on the required penalty associated with a second noncompliance.

Based on t he above DHS regulations, the occurrences of noncompliance are counted for the FIP benefit case, not the FIP benefit recipient. Though the undersigned was as surprised by this regulation as much as the DHS specialist, the regulation exists and was valid at the time of the undisputed n oncompliance. Thus, DHS properly counted two noncompliance actions on Claimant's FIP benefit case.

The other issue to consider is whether Claimant's FIP benef its were adversely affected by the inc orrect DHS assumption that t here would be no penalty to Claimant's FIP benefits case. The undersigned is inclined to think that Claimant was not unfairly affected.

Claimant and her LT P di d not dispute the original findings of noncompliance at the administrative hearing. As a result, the only effect of the offer of a return to JET without a disqualification was a delay in imposing the correct DHS regulation. Though initially proceeding based on an incorrect policy and latter imposing the correct policy is not ideal, there is no bas is to prevent DHS from imposing the correct policy. It is found that DHS properly terminated Claimant's FIP benefits based on a second noncompliance to Claimant's FIP benefit case.

DHS is to disqualif y a FAP group member for noncom pliance when all the following exist:

- the client was active both FIP and FAP on the date of the FIP noncompliance;
- the client did not comply with FIP employment requirements;
- the client is subject to a penalty on the FIP program;
- the client is not deferred from FAP work requirements; and
- the client did not have good cause for the noncompliance. BEM 233B at 2.

Clients meeting one of the criteria below are temporarily deferred from FAP employment-related activities:

- Age: Defer a person who is under age 16 or at least age 60, a 16- or 17-year old who is not the grantee or a grantee age 16 or 17 in special circumstances.
- Care of a Child: Defer one person who per sonally provides care for a child under age six who is in the FAP group.
- Care of Disabled Household Member: Defer one person who personally provides care for a disabled member of his/her own FAP group.
- Disability: Defer persons in capacitated due to injury, physical illness or mental illness.
- Education: A student enrolled up to half time in any recognized school, training program or institution of higher education meets the employment-related activities requirement. This includes per sons attending school for GED or adult high school completion.
- Employment: Persons employed, self-emp loyed or in work study an average of 30 hours or more per week over the benef it period or earning on average the federal minimum wage times 30 hours per w eek are not required to participate in any further employment-related activities. This includes migrant or seasonal farm workers with an employer or crew chief contract/agreement to begin work wit hin 30 days.
- Pregnancy: Defer pregnant women, begi nning the seventh month of pregnancy or earlier if a pregnancy complication is medically documented.
- SSI-FAP Applicant: Defer applicants who apply for both SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time.

- Substance Abuse Treatment Center Part icipant: Defer active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation. This does not include AA or NA group meetings. To verify use a verbal or written statement from the center.
- Unemploy ment Compensation (UC) Applicant or Recipient: Defer an applicant for or recipient of unemployment benefits. This includes a person whose unemployment benefits application denial is being appealed. BEM 230B at 3-5

DHS established all but one of the require ments to impose a F AP penalty. The only requirement in doubt is whet her Claimant and/or her LTP we re eligible for a deferral from the FAP penalty.

It is known that Claimant or her LTP were employed but the undersigned does not have sufficient evidence about the employment to determine whether either person worked enough to meet a basis for deferra I from the FAP benefit dis qualification. Accordingly, the issue of the FAP penalty is referred back for DHS for reconsideration.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, finds that DHS properly terminat ed Claimant's FIP benefit s effective 6/2011 based on a second JET noncompliance. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, finds that DHS did not establish whether Claimant or her LTP were deferred from a FAP employment activity based on employment. It is ordered that DHS:

- reconsider the employment hours of Cla imant and/or her LTP as a basis for deferral; and
- supplement Claimant's FAP benefits accord ingly, if it is found that either Claimant or her LTP qualify for a deferral from employment-related activities.

The actions taken by DHS are PARTIALLY REVERSED.

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Christian Gardocki Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: June 29, 2011

Date Mailed: June 29, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party wit hin 30 days of the ma iling date of this Decision and Order. Administrative Hear ings will n ot order a rehearing o r reconsideration on the Department's mo tion where the final decis ion 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.

CG/ctl

CC:

Wayne County DHS (49)/1843

Christian Gardocki Administrative Hearings