

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2011-34584
Issue Nos. 1038, 2006, 3008
Case No. [REDACTED]
Hearing Date: June 15, 2011
DHS County: Wayne (17)

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 15, 2011. Claimant appeared and testified. [REDACTED], Family Independence Specialist, appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether DHS terminated Claimant from the Family Independence Program (FIP), the Food Assistance Program (FAP) and Medical Assistance (MA or Medicaid) 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, FAP and MA benefits to Claimant.
2. DHS required Claimant to participate in the Jobs, Education and Training (JET) program in order to receive FIP benefits.

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3. Prior to March 2, 2011, DHS sent Claimant a Redetermination application form for the FAP and MA programs, and requested current income and expense information.
4. Claimant did not return the Redetermination form because she was relocating.
5. On March 3, 2011, Claimant was not assigned to a JET activity.
6. On March 23, 2011, DHS issued a Notice of Noncompliance alleging that Claimant did not participate in required work-related activity on March 3, 2011.
7. In April 2011, DHS terminated Claimant's FAP and MA benefits effective May 1, 2011.
8. On April 7, 2011, DHS issued a Notice of Case Action terminating Claimant's FIP benefits effective May 1, 2011.
9. On May 16, 2011, Claimant submitted a Request for a Hearing to DHS regarding the termination of her FIP, FAP and MA benefits.

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. Department policies are found in Bridges Administrative Manual (BAM), 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. Department policies are found in BAM, BEM and RFT. *Id.*

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the U.S. Code of Federal Regulations. DHS administers MA pursuant to MCL 400.10 *et seq.* and MCL 400.105. 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

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forth what the applicable policies are, I will examine whether they were in fact followed in this case.

In this case there are two separate issues I must address; first, the FIP work requirement issue, and second, the termination of Claimant's FAP and MA benefits.

With regard to the FIP program, BEM 230A, "Employment and/or Self-Sufficiency - Related Activities: FIP/RAP [Refugee Assistance Program] Cash," 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.

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.

My inquiry is focused on the date of March 3, 2011, because that is the date DHS claims that Claimant 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 or JET as signed Claimant to do anything on March 3, 2011, and I find nothing that documents that she failed to do it. Indeed, the Agency's Hearing Summary contains no information whatsoever about March 3, 2011, other than DHS' conclusory statement that Claimant did not participate in required activity.

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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.

Next I turn to the issue of DHS' termination of Claimant's FAP and MA benefits. I find that BAM 105 is the applicable DHS manual item in this case. BAM 105 requires DHS to administer its programs in a responsible manner to protect clients' rights.

At the outset of BAM 105 it states:

**RIGHTS AND RESPONSIBILITIES
DEPARTMENT POLICY**

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- Determine eligibility.
- Calculate the level of benefits.
- Protect client rights. BAM 105, p. 1 (bold print in original).

I read this opening section of BAM 105 to mean that the agency must fulfill these duties, and the agency is subject to judicial review of its fulfillment of these duties. If it is found that DHS failed in any duty to the client, it has committed error.

In addition I read BAM 105 to mean that as long as the client is cooperating and has not refused to cooperate, the agency can and should be flexible in its requests for verification. On page 5 it states:

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. See Refusal to Cooperate Penalties in this section....Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. *Id.*, p. 5.

Having identified the relevant legal authority for my decision, I now proceed to my analysis of how the law applies to the facts of the case at hand. DHS asserts that Claimant failed to provide it with necessary information for her Redetermination and she is therefore ineligible. The information in dispute consists of Claimant's Redetermination application form.

Applying this policy to the case at hand, I find and conclude that Claimant testified that she was moving and failed to return the form. I find and conclude that this is not a

refusal to cooperate, and Claimant shall be given another opportunity to submit her Redetermination application. I find and conclude that DHS failed to protect client rights when it failed to recognize that Claimant was cooperating with DHS, and did not reinstate her FAP and MA cases when it knew of her willingness to cooperate. I decide and determine that DHS erred in this case and a remedy is appropriate in the FAP and MA programs.

In conclusion, based on the findings of fact and conclusions of law above, I conclude and decide as follows:

1. DHS erred when it concluded that Claimant was noncompliant on March 3, 2011. I REVERSE the Agency's action in Claimant's FIP case, and ORDER that Claimant's FIP 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 if otherwise appropriate.
2. DHS erred by failing to protect Claimant's right to FAP and MA benefits. DHS is REVERSED with regard to its actions in the FAP and MA programs. DHS is ORDERED to reinstate and reopen Claimant's FAP and MA benefits, accept and process Claimant's Redetermination, and provide Claimant with any retroactive benefits to which she is entitled, in accordance with DHS policy and procedure.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS is REVERSED. IT IS ORDERED that DHS shall reinstate and reprocess Claimant's FIP, FAP and MA benefits, delete any negative actions imposed on Claimant, provide appropriate supplemental retroactive benefits, and re-enroll Claimant in the JET program, in accordance with DHS policies and procedures.

All steps shall be taken in accordance with DHS policy and procedure and the requirements of this decision.



Jan Leventer
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 20, 2011

Date Mailed: June 20, 2011

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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.

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