

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-44428
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: August 22, 2011
DHS County: Macomb (58-36)

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, which govern the administrative hearing and appeal process, and Claimant's request for a hearing. After due notice, a telephone hearing was held on August 22, 2011, in Detroit, MI. Claimant appeared and testified. [REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether DHS terminated Claimant from the Family Independence Program (FIP) 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 2011, DHS provided FIP benefits to Claimant.
2. DHS required Claimant to participate in the Jobs, Education and Training (JET) program in order to receive FIP benefits.
3. On June 9, 2011, DHS did not require Claimant to participate in a JET activity.
4. On June 14, 2011, DHS sent a Notice of Noncompliance to Claimant stating that she refused or failed to participate in JET on June 9, 2011. In the designated space for DHS to state the information, "How You Did Not Comply," the Notice states, "No participation in required activity."

5. On June 21, 2011, DHS issued a Notice of Case Action to Claimant stating that her FIP benefits would be terminated effective July 1, 2011, with the penalty that she was not allowed to reapply until after three months.
6. On July 5, 2011, Claimant filed 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 contain the policies and procedures DHS officially created for its own use. While the DHS policies and procedures are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. The manuals must be consulted in order to see what policies apply in this case. After setting forth what the applicable policies are, an analysis as to how they apply to the facts of this case will be presented.

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 DHS' 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).

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. This section means also 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.

June 9, 2011, is the date DHS states in the Notice of Noncompliance that Claimant was noncompliant. Based on an examination of the entire record in this case, there is no evidence to establish that DHS assigned Claimant to do anything on June 9, 2011, and nothing that documents that she failed to do it. The Notice of Noncompliance is further defective in that it does not state, other than in a conclusory, vague fashion, in what way Claimant failed to comply.

It is decided and concluded that DHS' Notice of Noncompliance was in error as it failed to allege a correct date Claimant was required to perform a JET activity and because it did not state a reason for the noncompliance. The notice is insufficient to give notice to Claimant of the specific date of noncompliance and in what way she failed to comply. Because these two items of information are inadequate, DHS has not identified and addressed Claimant's barriers to employment and self-sufficiency as required by BEM 233A. For this reason, DHS must be reversed.

In conclusion, based on the findings of fact and conclusions of law above, it is decided and determined that DHS erred when it concluded that Claimant was noncompliant on June 9, 2011. DHS' action in this case is REVERSED, and it is ordered 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES the Department's termination of Claimant's FIP benefits. IT IS ORDERED that DHS shall:

1. Reinstatement of Claimant's FIP benefits effective July 1, 2011 or other appropriate date;
2. Rescind all penalties imposed on Claimant;

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3. Delete any negative case actions taken;
4. Provide Claimant with all appropriate supplemental retroactive benefits;
5. Re-enroll Claimant in the JET program as one of the requirements for receiving FIP benefits.

All steps shall be taken 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: August 23, 2011

Date Mailed: August 23, 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.

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cc:

