

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-11876  
Issue No.: 1038  
Case No.: [REDACTED]  
Hearing Date: February 10, 2011  
DHS County: Wayne (82-18)

**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 February 10, 2011. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified for DHS.

**ISSUE**

Whether DHS terminated Claimant from the Family Independence Program (FIP) in accordance with DHS' 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. On August 2, 2010, Claimant enrolled in the JET program.
2. On September 1, 2010, Claimant began receiving FIP benefits.
3. On November 17, 2010, a triage meeting was conducted.
4. On November 17, 2010, Claimant submitted documentation to DHS indicating that a reasonable accommodation and possible deferral from the JET program was appropriate.

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5. On November 18, 2010, Claimant requested an extension of time in which to submit medical verification of her child's special needs.
6. On or about December 16, 2010, Claimant received correspondence from DHS indicating her FIP benefits would be terminated January 1, 2011.
7. On December 17, 2010, 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 the FIP program 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](http://www.michigan.gov/dhs-manuals).

The DHS Administrative Manuals 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.

DHS in its Hearing Summary cited BEM 230A and BEM 233A as the legal authority for its action. I agree that BEM 230A, "Employment and/or Self-Sufficiency Related Activities: FIP/RAP [Refugee Assistance Program] Cash," applies in this case. BEM 230A follows Federal and State law, which require that every work-eligible individual must participate in the JET Program or other employment-related activities unless the person is temporarily deferred or engaged in other activities that meet participation requirements. BEM 230A.

I have reviewed BEM 230A in its entirety and I do not find that this Item provides more specific guidance on the issue before me. I turn next to the manual penalty Item, BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP."

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 makes it 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.

I have examined all of the evidence and the testimony in this case as a whole. I must first determine what the date of noncompliance is. There is no Notice of Noncompliance in the record, so I cannot make a finding of fact based on an official document. The record contains a Bridges computer screen “dump” entitled “Additional Info” and indicating that “Date 1” is October 25, 2010. However, there is no evidence or testimony giving the basis of this date or corroborating that it is the date of noncompliance. Moreover, there is nothing in the record to establish that anything occurred on that date, other than a JET caseworker entry assigning Claimant’s case to a triage procedure. I do not consider a Bridges screen dump, without further testimony, to be clear and convincing evidence of noncompliance.

I find and conclude there is no clear and convincing evidence in the record that Claimant was noncompliant on any date, including October 25, 2010. I conclude and determine as a matter of law that DHS failed to establish the date of noncompliance. I therefore conclude that DHS error occurred. Unless and until DHS specifies the date the noncompliance happened, I do not know what, if any, barrier existed and what is necessary to remove it.

I find and determine that DHS error exists because the goals of DHS in BEM 233A were not met in this case. DHS’ official philosophy and focus is to assist clients in removing barriers to employment. I find and conclude that DHS failed to establish the date noncompliance occurred and, as a result, DHS failed to find out what, if any, barriers to employment and self-sufficiency existed on that day.

I find and conclude that the testimony and the evidence indicate that, at times, Claimant had genuine barriers to employment, e.g., transportation, child care, and a child with special needs. I find and conclude that Claimant is entitled to know on what date she

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failed to comply in order to know if she had good cause for her actions and if a barrier existed.

Second, I also find and determine that Claimant requested a reasonable accommodation for a child with special needs. I find and conclude that in furtherance of her request, Claimant asked for an extension to submit medical verification, and that request was disregarded. I find and determine as a conclusion of law that Claimant's rights were not protected in this case in that her right to reasonable extensions of time was denied even though she did not refuse to provide verification. BAM 105, "Rights and Responsibilities;" BAM 130, "Verification and Collateral Contacts," p. 5.

I therefore REVERSE DHS' action in this case and return this case to DHS to reinstate Claimant's benefits effective September 1, 2010, or other appropriate date. IT IS ORDERED that Claimant's benefits are reinstated, any penalty imposed by DHS shall be rescinded, and Claimant's benefits shall be continued in accordance with DHS policies and procedures. I find and determine that unless DHS can identify a specific date of noncompliance and specify the noncompliant act or failure to act, Claimant is entitled to full FIP benefits.

IT IS FURTHER ORDERED that DHS shall process Claimant's request for a reasonable accommodation based on her child's special needs requirements.

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 termination of Claimant's FIP benefits. IT IS ORDERED THAT DHS shall reinstate Claimant's FIP benefits as of September 1, 2010, or other appropriate date, rescind any penalties imposed upon her for noncompliance with the JET program, and continue Claimant's FIP benefits. IT IS FURTHER ORDERED that Claimant shall be permitted to submit medical documentation to establish a reasonable accommodation and DHS shall process her request. All steps taken by DHS shall be in accordance with this opinion and with DHS policies and procedures.



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

Date Signed: February 17, 2011

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Date Mailed: February 17, 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.

JL/pf

cc:

