

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.: 2011-15089
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: February 14, 2011
DHS County: Wayne (82-31)

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 14, 2011. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS terminated Claimant from the Family Independence Program (FIP) in accordance with its own 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 2010, Claimant received FIP benefits and participated in the Jobs, Education and Training (JET) program.
2. On October 20, 2010, DHS issued a Notice of Noncompliance stating that on September 16, 2010, Claimant did not participate in the required activity.
3. Claimant did not receive the Notice of Noncompliance.
4. On December 1, 2010, DHS terminated Claimant's FIP benefits.
5. On January 3, 2011, Claimant submitted a Request for 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 (MACR) 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 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 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 Jobs, Education and Training (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 that 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. The Notice of Noncompliance asserts that there was noncompliance on September 16, 2010, but there is nothing in the record before me to establish that anything at all occurred on that date with regard to Claimant's benefit history. Indeed, there are only two JET caseworker's notes for September 2010, one dated September 9 and one dated September 30. I find and determine that there is nothing in the record that proves that an act of noncompliance occurred on September 16, 2010.

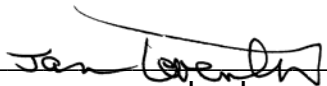
I find and conclude there is no clear and convincing evidence in the record that Claimant was noncompliant on September 16, 2010. Accordingly, I find that the Notice of Noncompliance was issued in error and must be rescinded. I find and determine that DHS error exists because the DHS goals in BEM 233A 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.

Based on the above findings of fact and conclusions of law, I therefore REVERSE DHS' action in this case and return this case to DHS to reinstate Claimant's FIP benefits effective December 1, 2010, or other appropriate date. IT IS ORDERED that Claimant's benefits are reinstated, any penalties imposed by DHS shall be rescinded, and Claimant's benefits shall be continued in accordance with DHS policies and procedures.

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' termination of Claimant's FIP benefits. IT IS ORDERED that DHS shall reinstate Claimant's FIP benefits as of December 1, 2010, or other appropriate date, rescind any penalties imposed upon her for noncompliance with the JET program, and continue Claimant's FIP benefits. All steps taken by DHS shall be in accordance with this opinion and with DHS policies and procedures.



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

Date Signed: February 17, 2011

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:

