

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-31422  
Issue Nos.: 1038, 3029, 6019  
Case No.: [REDACTED]  
Hearing Date: May 25, 2011  
DHS County: Wayne (82-43)

**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 May 25, 2011. Claimant appeared and testified. [REDACTED] Claimant's Authorized Representative, appeared and testified on behalf of Claimant. [REDACTED], appeared and testified for the Department of Human Services (DHS).

**ISSUE**

Whether DHS terminated Claimant from the Family Independence Program (FIP) and reduced Claimant's Food Assistance Program (FAP) benefits and the Child Development and Care (CDC) programs 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, FAP and CDC benefits to Claimant.
2. DHS required Claimant and her husband to participate in the Jobs, Education and Training (JET) program in order to receive FIP, FAP and CDC benefits.
3. On March 4, 2011, Claimant's husband was not assigned to JET activity.

4. On March 16, 2011, DHS issued a Notice of Noncompliance stating that on March 4, 2011, Claimant's husband was not in compliance with the JET program.
5. On March 25, 2011, DHS issued a Notice of Case Action terminating Claimant's FIP and CDC benefits and reducing Claimant's FAP benefits effective May 1, 2011.
6. On April 27, 2011, 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 FIP 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](http://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 (CFR). DHS administers FAP pursuant to MCL 400.10 *et seq.* and MACR 400.3001-400.3015. DHS' policies are found in BAM, BEM and RFT. *Id.*

CDC was established by Titles IVA, IVE and XX of the Social Security Act, the U.S. Child Care and Development Block Grant of 1990, and the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by CFR Title 45, Parts 98 and 99. DHS provides services to adults and children pursuant to MCL 400.14(1) and MACR 400.5001-400.5015. DHS' policies are contained 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 forth what the applicable policies are, I will examine whether they were in fact followed in this case.

First, 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," is the second legal authority which applies to DHS' action in this case.

Third, BEM 233B, "Failure to Meet Employment Requirements: FAP," also applies in this case, in that DHS' action terminates Claimant's FAP as well as FIP benefits. The BEM 233A and BEM 233B legal requirements are essentially the same as applied to this case.

Fourth, BEM 703, "CDC Program Requirements," requires that when a person in the CDC family group is not participating in employment, the need for CDC benefits stops and DHS must terminate this benefit. BEM 703, p. 7.

I now return to BEM 233A, because it 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 4, 2011, because that is the date DHS claims Claimant was noncompliant. This date can be found in DHS' Notice of Noncompliance, which states:

A meeting has been scheduled to give you an opportunity to report and verify your reasons for noncompliance... It is your responsibility to report

and verify reasons for your actions. This is your opportunity to claim barriers that make it hard for you to work. Department Exhibit 1, p. 3.

I have examined all of the evidence and testimony in this case as a whole. I find nothing in the record to establish what DHS assigned Claimant's husband to do on March 4, 2011, and I find nothing that documents that he failed to do it. Indeed, DHS submitted no records whatsoever regarding Claimant's husband's participation in JET. Based on this record, I find and determine that DHS erred in this case in that it failed to announce to Claimant a verifiable date when the noncompliance occurred and what actually happened at the time.

I find and conclude that DHS has 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 DHS' duty under BEM 233A, BEM 233B and BEM 703 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.

In conclusion, based on the findings of fact and conclusions of law above, I find that DHS erred when it concluded that Claimant's husband was noncompliant on March 4, 2011. I REVERSE DHS' action in this case and order that Claimant's full FIP, FAP and CDC 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 and her husband shall be allowed to re-enroll in the JET program.

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 May 1, 2011, termination of Claimant's full FIP, FAP and CDC benefits. IT IS ORDERED that DHS shall reinstate Claimant's FIP, FAP and CDC benefits, DHS shall rescind all penalties imposed on Claimant, DHS shall delete any negative case actions taken, and DHS shall provide to Claimant all appropriate supplemental, retroactive benefits. IT IS FURTHER ORDERED that DHS shall re-enroll Claimant and her husband in the JET program as one of the requirements for receiving FIP, FAP and CDC benefits.

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All steps taken by DHS shall be in accordance with this opinion and DHS policies and procedures.



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

Date Signed: June 6, 2011

Date Mailed: June 8, 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:

