

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.: 2011-3262
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: January 18, 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 January 18, 2011. Claimant appeared and testified. [REDACTED] appeared as Claimant's Authorized Representative and as a witness for Claimant. [REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether DHS properly terminated Claimant from the Jobs, Education and Training (JET) Program, thereby disqualifying her from Family Independence Program (FIP) benefits?

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 began receiving FIP benefits.
2. As a requirement of receiving benefits, Claimant registered for the JET program.
3. Effective July 1, 2010, Claimant's FIP benefits were terminated.
4. From July 1, 2010-October 31, 2010, a period of four months, DHS imposed a penalty upon Claimant and did not provide FIP benefits to Claimant.
5. On October 7, 2010, Claimant requested a hearing with DHS.

6. Effective November 1, 2010, DHS reinstated Claimant's FIP 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. 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 are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by 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 no legal authority for its action. I determine 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 requires 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.

Next, I turn to the manual's 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 by this statement that its goal is to identify and remove barriers to employment and that the goal is *not* to penalize customers for generalized failures and mistakes. I read this section also 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 the penalties will not apply.

Applying this section to the facts of the case before me, I find and conclude that DHS committed error in this case and must be REVERSED. I find and determine that the goals of DHS were not met in this case. I find and conclude that DHS failed to identify a specific date on which noncompliance occurred, and because no date was identified, DHS cannot possibly determine what, if any, act or failure to act occurred and what, if any, barriers to employment and self-sufficiency existed on that day.

I find and conclude that the testimony of all parties at the hearing indicate that Claimant had health and other barriers to employment at various times, but without DHS' specification of what date the noncompliance occurred, I have no idea whether any of these impediments constituted good cause on a specific date.

My decision in this case is a finding that DHS failed to establish the actual date that noncompliance occurred and it is therefore impossible to determine what the noncompliant act, or failure to act, consisted of. I find and conclude that Claimant is entitled to know on what date she failed to comply. I determine that without a specific date, DHS failed to establish by clear and convincing evidence that there was noncompliance in this matter.

I therefore REVERSE DHS' action in this case and return this case to DHS to reinstate Claimant's benefits for the four-month period of July-October, 2010. IT IS ORDERED that Claimant's penalty shall be revoked, her benefits shall be reinstated and supplemented and continued in accordance with DHS policies and procedures. I find and determine that unless and until DHS can identify a specific date of noncompliance and specify the noncompliant act or failure to act, Claimant is entitled to FIP benefits.

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 from July-October, 2010. IT IS ORDERED THAT DHS shall reinstate and supplement Claimant's benefits for July-October, 2010 and revoke her penalty 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: February 1, 2011

Date Mailed: February 2, 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:

