

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201134311
Issue No. 1038
Case No. [REDACTED]
Hearing Date: June 15, 2011
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on June 15, 2011. The claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED] Specialist, appeared and testified.

ISSUE

Whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits based on a disqualification against Claimant and her living together partner.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing FIP benefit recipient.
2. Claimant was part of a FIP benefit group that included her living together partner (LTP).
3. Claimant and her LTP were found noncompliant with JET participation in 2/2011.
4. Following the noncompliance, DHS offered Claimant and her LTP the opportunity to return to JET without a disqualification because the noncompliance was the first each for Claimant and her LTP.
5. Claimant and her LTP agreed to the DHS offer.

6. Subsequent to the return to JET, Claimant and/or her LTP began receiving employment income.
7. On 4/29/11, DHS began budgeting the employment income and determined Claimant was ineligible for FIP benefits effective 6/2011 based on two noncompliance findings (one each for Claimant and her LTP).
8. DHS also assessed a disqualification penalty to Claimant's FAP benefits resulting in an unspecified FAP benefit reduction.
9. On 5/4/11, Claimant requested a hearing to dispute the FIP benefit termination and FAP benefit reduction based on noncompliance with JET participation.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 4/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A at 1. Federal and state laws require each work eligible individual (WEI) in a FIP group to participate in Jobs, Education and Training (JET) Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. *Id.* These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

JET is a program administered by the Michigan Department of Energy, Labor and Economic Growth through the Michigan Works! Agencies. *Id.* The JET program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.*

The WEI is considered non-compliant for failing or refusing to appear and participate with JET or other employment service provider. *Id.* at 2. Note that DHS regulations do not objectively define, "failure or refusing to appear and participate with JET". Thus, it is left to interpretation how many hours of JET absence constitute a failure to participate.

In the present case, it was not disputed that Claimant and her LTP were found noncompliant with JET participation. It was also not disputed that DHS offered Claimant and LTP an opportunity to return to JET without a disqualification because it was the first noncompliance for Claimant and her LTP. When DHS made the offer to Claimant, DHS presumed that the offer was in compliance with their regulations.

The penalty for noncompliance without good cause is FIP closure. BEM 233A at 6. Effective April 1, 2007, the following minimum penalties apply:

- For the first occurrence on the FIP case, DHS is to close the FIP for not less than three calendar months unless the client is excused from the noncompliance as noted in First Case Noncompliance Without Loss of Benefits below.
- For the second occurrence on the FIP case, close the FIP for not less than three calendar months.
- For the third and subsequent occurrence on the FIP case, close the FIP for not less than 12 calendar months. *Id.*

The testifying DHS specialist expressed surprise when Claimant's FIP benefits were subsequently terminated when Claimant's employment income was factored. The specialist anticipated FIP benefit termination (or conversion to Extended FIP) based on employment income. Instead the FIP benefits ended based on the required penalty associated with a second noncompliance.

Based on the above DHS regulations, the occurrences of noncompliance are counted for the FIP benefit case, not the FIP benefit recipient. Though the undersigned was surprised by this regulation as much as the DHS specialist, the regulation exists and was valid at the time of the undisputed noncompliance. Thus, DHS properly counted two noncompliance actions on Claimant's FIP benefit case.

The other issue to consider is whether Claimant's FIP benefits were adversely affected by the incorrect DHS assumption that there would be no penalty to Claimant's FIP benefits case. The undersigned is inclined to think that Claimant was not unfairly affected.

Claimant and her LTP did not dispute the original findings of noncompliance at the administrative hearing. As a result, the only effect of the offer of a return to JET without a disqualification was a delay in imposing the correct DHS regulation. Though initially proceeding based on an incorrect policy and later imposing the correct policy is not ideal, there is no basis to prevent DHS from imposing the correct policy. It is found that DHS properly terminated Claimant's FIP benefits based on a second noncompliance to Claimant's FIP benefit case.

DHS is to disqualify a FAP group member for noncompliance when all the following exist:

- the client was active both FIP and FAP on the date of the FIP noncompliance;
- the client did not comply with FIP employment requirements;
- the client is subject to a penalty on the FIP program;
- the client is not deferred from FAP work requirements; and
- the client did not have good cause for the noncompliance. BEM 233B at 2.

Clients meeting one of the criteria below are temporarily deferred from FAP employment-related activities:

- Age: Defer a person who is under age 16 or at least age 60, a 16- or 17-year old who is not the grantee or a grantee age 16 or 17 in special circumstances.
- Care of a Child: Defer one person who personally provides care for a child under age six who is in the FAP group.
- Care of Disabled Household Member: Defer one person who personally provides care for a disabled member of his/her own FAP group.
- Disability: Defer persons incapacitated due to injury, physical illness or mental illness.
- Education: A student enrolled up to half time in any recognized school, training program or institution of higher education meets the employment-related activities requirement. This includes persons attending school for GED or adult high school completion.
- Employment: Persons employed, self-employed or in work study an average of 30 hours or more per week over the benefit period or earning on average the federal minimum wage times 30 hours per week are not required to participate in any further employment-related activities. This includes migrant or seasonal farm workers with an employer or crew chief contract/agreement to begin work within 30 days.
- Pregnancy: Defer pregnant women, beginning the seventh month of pregnancy or earlier if a pregnancy complication is medically documented.
- SSI-FAP Applicant: Defer applicants who apply for both SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time.

- Substance Abuse Treatment Center Participant: Defer active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation. This does not include AA or NA group meetings. To verify use a verbal or written statement from the center.
- Unemployment Compensation (UC) Applicant or Recipient: Defer an applicant for or recipient of unemployment benefits. This includes a person whose unemployment benefits application denial is being appealed. BEM 230B at 3-5

DHS established all but one of the requirements to impose a FAP penalty. The only requirement in doubt is whether Claimant and/or her LTP were eligible for a deferral from the FAP penalty.

It is known that Claimant or her LTP were employed but the undersigned does not have sufficient evidence about the employment to determine whether either person worked enough to meet a basis for deferral from the FAP benefit disqualification. Accordingly, the issue of the FAP penalty is referred back for DHS for reconsideration.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefits effective 6/2011 based on a second JET noncompliance. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS did not establish whether Claimant or her LTP were deferred from a FAP employment activity based on employment. It is ordered that DHS:

- reconsider the employment hours of Claimant and/or her LTP as a basis for deferral; and
- supplement Claimant's FAP benefits accordingly, if it is found that either Claimant or her LTP qualify for a deferral from employment-related activities.
-

The actions taken by DHS are PARTIALLY REVERSED.


Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

201134311/CG

Date Signed: June 29, 2011

Date Mailed: June 29, 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.

CG/ctl

cc: [REDACTED]
Wayne County DHS (49)/1843
[REDACTED]
Christian Gardocki
Administrative Hearings