

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2011-36703
Issue No. 1038
Case No. [REDACTED]
Hearing Date: July 14, 2011
WAYNE (49)

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, which govern the administrative hearing and appeal process, and Claimant's request for a hearing. After due notice, a telephone hearing was held on July 14, 2011 in Detroit. Claimant appeared and testified. [REDACTED] Family Independence Specialist, appeared and testified for the Department of Human Services (DHS). [REDACTED] Family Independence Manager, was also present at the hearing.

ISSUE

Whether DHS terminated Claimant from the Family Independence Program (FIP) 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 benefits to Claimant.
2. DHS required Claimant to participate in the Jobs, Education and Training (JET) program in order to receive FIP benefits.
3. On May 5, 2011, DHS issued a Notice of Noncompliance stating that Claimant was noncompliant on May 2, 2011.

4. Claimant was not assigned to a JET activity on May 2, 2011.
5. On May 12, 2011, DHS sent Claimant a First Noncompliance Letter.
6. On May 24, 2011, Claimant filed a Request for Hearing with 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 400.3101-400.3131. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

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," also governs DHS' action in this case.

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 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 May 2, 2011, because that is the date DHS claims that Claimant was noncompliant with JET. I have examined all of the evidence and testimony in this case as a whole. I find no evidence in the record to establish that DHS or JET assigned Claimant to do anything on May 2, 2011, and I find nothing that documents that she failed to do it. Indeed, the Agency's Hearing Summary contains no information whatsoever other than a conclusory statement that Claimant was noncompliant. While Claimant may have "agreed" she was noncompliant without good cause, her immediate response to the penalty letter was to file a hearing request. I believe Claimant's hearing request encompasses the entire JET compliance procedure and requires the Administrative Law Judge to examine that procedure in its entirety.

Based on the record before me, I find and determine that DHS erred in this case, in that it failed to announce to the Claimant a verifiable date that noncompliance occurred and what actually happened on that day. I find and conclude that DHS 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 the duty of DHS under BEM 233A 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 was noncompliant on May 2, 2011. I REVERSE the Agency's action in this case, and order that Claimant's FIP 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 shall be allowed to re-enroll in the JET program.

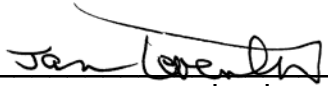
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES the Department's May 12, 2011 First Noncompliance Letter. IT IS HEREBY ORDERED that DHS shall:

1. Rescind the Notice of Noncompliance of May 5, 2011;

2. Rescind the First Noncompliance Letter of May 12, 2011;
3. Reinstate Claimant's FIP benefits;
4. Delete any negative actions taken against Claimant from her file;
5. Provide supplemental benefits to Claimant as appropriate to restore her to the benefit level to which she is entitled;
6. Re-enroll Claimant in the JET program.

All steps shall be taken in accordance with DHS policies and procedures and with the requirements of this decision.



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

Date Signed: July 18, 2011

Date Mailed: July 18, 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/cl

cc:

