

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

IN THE MATTER OF:



Reg. No: 2011-37486

Issue No: 3029



Kalkaska County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received on June 9, 2011. After due notice, a telephone hearing was held on July 13, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly sanctioned Claimant's Food Assistance Program (FAP) case for failure to meet employment requirements in December, 2010?

FINDINGS OF FACT

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

1. Claimant was receiving FAP at all times pertinent to this hearing when Claimant's significant other, a group member, was fired from his job. (Department Exhibits 23-25).
2. Claimant was mailed a Notice of Case Action (DHS-1605) on April 27, 2011, informing her that her FAP benefits were decreasing effective May 1, 2011, because a group member failed to participate in an employment-related activity. (Department Exhibits 15-17).
3. Claimant submitted a hearing request on June 9, 2011, protesting the decrease in her FAP benefits.

## CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

Department policy indicates that non-deferred adult members of FAP households must follow certain work-related requirements in order to receive FAP benefits. The department will disqualify non-deferred adults who were working when the person is fired without good cause from a job for misconduct or absenteeism (i.e. not for incompetence). Misconduct sufficient to warrant firing includes any action by a worker that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work. BEM 233B.

The department must determine good cause before implementing a disqualification. Good cause is a valid reason for failing to participate in employment and/or self-sufficiency-related activities or refusing suitable employment. BEM 233B. Based on the evidence received from the employer, Claimant's significant other's was fired for receiving traffic tickets and being involved in accidents while a truck driver. Therefore, Claimant did not meet any of the deferral criteria, and he was subject to a FAP disqualification.

Claimant admits that the department was informed that her significant other was fired due to receiving tickets and being involved in accidents. Claimant stated that he received two tickets for speeding but that the roll over accident was not his fault as the material he was carrying shifted, which caused the truck to roll over.

However, Claimant testified that the real reason he was fired was because he was unable to perform the duties of driving a truck to his employer's satisfaction, which was not his fault. Claimant later stated that had his employer truly thought he was incompetent, he would have been fired immediately after the accident or tickets, and not allowed to work a full week of 70 hours and then being fired. Notably, the employer stated the reason for termination was tickets and accidents and speeding while driving a semi-truck hauling a trailer is an action by a worker that is harmful to the interest of the employer.

Claimant also stated that her significant other should have been given the opportunity for a Triage to establish good cause. According to policy, Triage is only a mandatory requirement when a group member is receiving cash assistance from the Family Independence Program (FIP). BEM 233A. This case involved only the FAP program. Therefore, Triage was not required. BEM 233B.

Claimant also stated that her significant other was fired in December 2010, and the department failed to follow their own policy by waiting until April to notify her that her FAP benefits were decreasing. The department admitted that their computer system did not process Claimant's significant other's firing timely.

According to policy for recipients of FAP benefits, the department must begin the disqualification the first month possible after it has determined or is notified of the failure to comply. Based on the department's computer error, the department acted when the computer made them aware of his firing and in accord with policy, mailed Claimant the timely notice of her FAP benefits decreasing on April 27, 2011. Likewise, following policy, the department began the disqualification the first month after the negative action period ended. BEM 233B. The Notice informed Claimant that as of May 1, 2011, her benefits would be decreased as a result of his failure to participate in employment activities.

The Administrative Law Judge finds that the evidence submitted showed that Claimant's significant other was a mandatory work participant. As a result of his firing, he did not complete his 30 hours a week of employment. Because this was Claimant's second or subsequent occurrence of non-compliance, the department properly imposed a six month sanction.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that that the department properly sanctioned Claimant's Food Assistance Program (FAP) case for failure to meet employment requirements in December, 2010.

Accordingly, the department's decision and six month sanction is UPHELD.

It is SO ORDERED.

\_\_\_\_\_/s/\_\_\_\_\_  
Vicki L. Armstrong  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 7/13/11

Date Mailed: 7/13/11

**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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

VLA/ds

■ [REDACTED]