

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201144052
Issue No.: 3029
Case No.: [REDACTED]
Hearing Date: August 17, 2011
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 17, 2011. The Claimant appeared and testified. [REDACTED], ES and [REDACTED], APS, appeared on behalf of the Department.

ISSUE

Did the Department properly close the Claimant's Food Assistance (FAP) case due to her resignation from employment without good cause.

FINDINGS OF FACT

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

1. The Claimant applied for Food Assistance (FAP) on July 7, 2011. The Department opened a FAP case for the month of July 2011.
2. At the intake interview, the Claimant advised that she resigned from her job because she was going to be fired by her employer for reasons she did not agree with regarding a broken food freezer.
3. The Department attempted on two occasions to verify with the employer what occurred to cause the Claimant to resign, and the employer did not provide the Department with any reasons other than the Claimant no longer worked for the employer.

4. The Claimant was asked to resign arising out of an incident which occurred when a freezer at work broke and could not be fixed, as it was Sunday. The Claimant was a manager of the restaurant and was asked to resign or be fired because she did not remove the food from the freezer. The Claimant decided to resign rather than be fired. The Claimant's resignation was not voluntary.
5. The Claimant's supervisor was aware of the freezer problem and did not instruct the Claimant to remove the food from the freezer. The Claimant left the next day for vacation without removing the food.
6. The Department closed the Claimant's food assistance case for 30 days effective August 1, 2011 for resigning employment without good cause.
7. The Claimant requested a hearing on July 17, 2011 protesting the closure of her FAP case.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) 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). The Department of Human Services (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 400.10 *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

This matter is governed by BEM 233 B which provides:

DEPARTMENT PHILOSOPHY

DHS requires participation in employment and/or self-sufficiency-related activities associated with the Family Independence Program (FIP) or Refugee Assistance Program (RAP). Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. There are consequences for a client who refuses to participate in FIP/RAP employment and/or self-sufficiency-related activities or refuses to accept or maintain employment without good cause.

GOOD CAUSE FOR NONCOMPLIANCE

Good cause is a valid reason for failing to participate in employment and/or self-sufficiency-related activities or refusing suitable employment.

Investigate and determine good cause before deciding whether to impose a disqualification. Good cause includes the following:

Unreasonable Conditions

The employer makes unreasonable demands or conditions BEM 233B, page 6

BEM 233 A provides refusing suitable employment includes:

Quitting a Job or Firing for misconduct or absenteeism (not for incompetence).BEM 233A

Department regulations also provide some guidance with regard to determining misconduct for FIP cases, BEM 233 A provides:

Misconduct sufficient to warrant firing includes any action by an employee or other adult group member 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 233A, Page 3.

In this case the Claimant was told she would be fired if she did not resign from her job, due to a circumstance with a food freezer at the restaurant she was managing. The Claimant credibly testified that she told her supervisor that the freezer was not working, her supervisor was aware of the problem and that she was fired for not removing the food from the freezer. The Claimant could not get the freezer repaired because it was Sunday. The Claimant's supervisor never instructed her to remove the food from the freezer. The Claimant left for a vacation the next day and did not remove the food. Based on these facts and the credible testimony of the Claimant, the Claimant had no choice but to resign or be fired under circumstances which indicate that she should not have been fired. The employer made an unreasonable demand of the Claimant , to resign or be fired for failing to do something she was never told to do. Under these circumstances there is no evidence of intentional misconduct, or gross negligence. Therefore, the Department's closure of the Claimant's FAP benefits for 30 days is not supported by the record presented as the Claimant demonstrated good cause for resigning her employment. BEM 233A.

DECISION AND ORDER

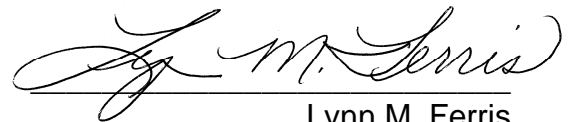
The Administrative Law Judge, based on the above findings of fact and conclusions of law finds that the Claimant demonstrated good cause reasons why she resigned her employment, and that the Department's determination to close her Food Assistance

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benefits for failing to participate in employment activities when she resigned her job is in error. The Claimant demonstrated good cause and the Department's determination to close her Food Assistance (FAP) case is REVERSED.

Accordingly it is ORDERED:

1. The Department shall initiate reopening and reinstate the Claimant's FAP case retroactive to the date of closure, August 1, 2011.
2. The Department shall remove the negative action closing the Claimant's FAP case effective August 1, 2011.
3. The Department shall issue a supplement to the Claimant for any FAP benefits she was otherwise entitled to receive, in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 24, 2011

Date Mailed: August 24, 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 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.

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