

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

IN THE MATTER OF:



Reg. No.: 2011-45323
Issue No.: 1038, 3008
Case Nos.: [REDACTED]
Hearing Date: August 25, 2011
DHS County: Wayne (82-17)

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 August 25, 2011, in Detroit, MI. Claimant appeared and testified.

[REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether DHS terminated Claimant from the Family Independence Program (FIP) and the Food Assistance program (FAP) 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 and FAP benefits to Claimant.
2. DHS required Claimant to participate in JET in order to receive FIP and FAP benefits.
3. On May 18, 2011, DHS did not require Claimant to participate in a JET activity.
4. On May 20, 2011, DHS sent a Notice of Noncompliance to Claimant stating that she refused or failed to participate in JET on May 18, 2011. In the designated

space for DHS to state the information, "How You Did Not Comply," the Notice states, "No participation in required activity."

5. On May 26, 2011, DHS issued a Notice of Case Action to Claimant stating that her FIP and FAP benefits would be terminated effective July 1, 2011.
6. On July 13, 2011, Claimant submitted a Request for a Hearing to 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 (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.

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.* and MACR 400.3001-3015. DHS' policies are found in BAM, BEM and RFT. *Id.*

The DHS manuals contain the policies and procedures DHS officially created for its own use. While the DHS policies and procedures are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. The manuals must be consulted in order to see what policies apply in this case. After setting forth what the applicable policies are, an analysis as to how they apply to the facts of this case will be presented.

First, BEM 230A, "Employment and/or Self-Sufficiency-Related Activities: FIP/RAP [Refugee Assistance Program] Cash," follows Federal and State law, which requires 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 DHS' 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).

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. This section also means 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.

There is also a third manual item applicable in this case, BEM 233B, "Failure to Meet Employment Requirements: FAP." BEM 233B imposes the same JET requirement upon clients receiving FAP benefits as BEM 233A requires for clients receiving FIP benefits.

This analysis focuses on the date of May 18, 2011, because that is the date DHS states in the Notice of Noncompliance that Claimant was noncompliant. Based on a review of all of the evidence and testimony in this case as a whole, it is determined and concluded that there is no evidence in the record to establish that DHS assigned Claimant to do anything on May 18, 2011, and nothing that documents that she failed to do it. The Notice of Noncompliance is further defective in that it does not state, other than in a vague, conclusory fashion, in what way Claimant failed to comply.

DHS' position focuses on the verification issue, i.e., whether Claimant presented sufficient documentation of a job interview on an earlier date, May 16, 2011. However, it is found and concluded that identification of employment barriers and not verification is the overriding issue in this case. This is because there can be no question of credibility until the date of the failure is actually established.

DHS' failure to present Claimant with an accurate, specific date in the Notice of Noncompliance, with specific reasons about what she failed to do, is legally insufficient to meet DHS' notice requirement in its rules and regulations. The effect of DHS' failure is that the program then fails to address barriers to employment and self-sufficiency. BEM 233A and 233B require DHS to find a person's barriers to employment and attempt to address them. For this reason DHS must be reversed.

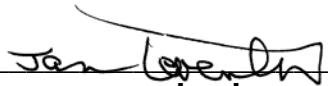
In conclusion, based on the findings of fact and conclusions of law above, it is decided and concluded that DHS erred when it stated that Claimant was noncompliant on May 18, 2011. DHS' action in this case is REVERSED, Claimant's FIP and FAP benefits shall be reinstated, DHS shall provide Claimant with 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 termination of Claimant's FIP and FAP benefits. IT IS ORDERED that DHS shall:

1. Initiate procedures to reinstate Claimant's FIP benefits effective July 1, 2011;
2. Initiate procedures to rescind all penalties imposed on Claimant;
3. Initiate procedures to delete any negative case actions taken;
4. Initiate procedures to provide Claimant with all appropriate supplemental retroactive benefits;
5. Initiate procedures to re-enroll Claimant in the JET program as one of the requirements for receiving FIP and FAP benefits.

All steps shall be taken 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: August 29, 2011

Date Mailed: August 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

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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:

