

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-8734
Issue Nos.: 1038, 3029, 6019
Case No.: [REDACTED]
Hearing Date: January 5, 2011
DHS County: Oakland (63-02)

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 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on January 5, 2011. Claimant appeared and testified. [REDACTED]

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

ISSUE

Whether DHS properly terminated Claimant from the JET Program, thereby disqualifying her from the Family Independence Program (FIP) and the Food Assistance Program (FAP), and from receiving Child Care and Development (CDC) benefits?

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 2010, Claimant began receiving FIP, FAP and CDC benefits.
2. As a requirement of receiving these benefits, Claimant participated in the JET program at the [REDACTED] ter.
3. On October 29, 2010, at a triage conference, Claimant agreed she was noncompliant and agreed to attend an orientation meeting on November 4, 2010.
4. Claimant failed to attend the November 4, 2010, orientation.

5. DHS failed to schedule a triage conference to determine if good cause existed for Claimant's failure to participate in the November 4, 2010, orientation.
6. On November 10, 2010, DHS terminated Claimant's benefits effective December 1, 2010.
7. On November 24, 2010, Claimant filed a hearing request notice with DHS.

CONCLUSIONS OF LAW

FIP was established pursuant to the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601 *et seq.* DHS administers the FIP program 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 in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP program pursuant to MCL 400.10 *et seq.*, and MACR 400.3001-400.3015. DHS' FIP policies are found in BAM, BEM and RFT. *Id.*

CDC was established by Titles IVA, IVE and XX of the U.S. Social Security Act, the U.S. Child Care and Development Block Grant of 1990, and the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by CFR Title 45, Parts 98 and 99. DHS provides services to adults and children pursuant to MCL 400.14(1) and MACR 400.5001-400.5015. *Id.*

The DHS Administrative Manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by 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.

DHS cited two manual Items to me in the DHS Hearing Summary, BEM 230A, "Employment and/or Self-Sufficiency Related Activities: FIP/RAP [Refugee Assistance Program] Cash," and BEM 230B, "Employment-Related Activities: FAP." BEM 230A and 230B follow Federal and State law, which require that every work-eligible individual must participate in the JET Program or other employment-related activities unless the person is temporarily deferred or engaged in other activities that meet participation requirements. BEM 230A, BEM 230B.

While I agree that these two Items set forth various requirements, in this case I find there is no dispute that such requirements exist. Therefore, I do not believe these two Items are relevant, and I must look elsewhere in the manuals for more specific guidance. Instead, I turn to the manual penalty sections, which are BEM 233A, "Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP," and BEM 233B, "Failure to Meet Employment Requirements: FAP." These two sections coordinate with each other so that if a customer is disqualified from FIP and all other conditions are met, the customer will be disqualified from FAP as well. BEM 233B, p. 2.

Returning to BEM 233A, this manual Item 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 (sic) 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 makes it clear by this statement that its goal is to identify and remove barriers to employment, and that the goal is not to penalize customers for failures and mistakes. I read this section also to mean that if the customer shows good cause for her/his action or failure to act, the event will be excused and will not be held against her/him and the penalties will not apply.

Applying this section to the facts of the case before me, I find and conclude that the goals of DHS were not met in this case. I find and conclude that DHS failed to determine what, if any, barriers to employment and self-sufficiency existed on November 4, 2010. I find and conclude that the testimony of the [REDACTED] representative raises the possibility that lack of child care on November 4 was a barrier to Claimant's self-sufficiency and employment. I determine that DHS must conduct a triage conference with Claimant and make a determination about this issue.

My decision in this case is a finding that DHS failed to provide Claimant with an opportunity to establish good cause for her failure to appear on November 4, 2010. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities based on factors that are beyond the control of the

customer. *Id.*, pp. 1, 3, and 12. I find and conclude that Claimant is entitled to an opportunity to prove she had good cause for her failure to appear for the orientation.

I therefore REVERSE the Department's action in this case and return this case to DHS for a good-cause or triage hearing to determine if good cause exists for Claimant's absence November 4, 2010. IT IS ORDERED that Claimant's benefits shall be reinstated and continued in order for DHS to make a good-cause determination, which shall be made in accordance with DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, REVERSES the Department's unlimited termination of Claimant's FIP, FAP and CDC benefits.

IT IS ORDERED THAT the December 1, 2010, termination of FIP, FAP and CDC benefits in this case is in error and Claimant's benefits shall be reinstated pending a good-cause determination meeting, in accordance with DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: January 10, 2011

Date Mailed: January 13, 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.

2011-8734/JL

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:

