

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

IN THE MATTER OF:



Reg. No. 2012-2374
Issue No. 1038; 3029
Case No. [REDACTED]
Hearing Date: November 7, 2011
County: Wayne County

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to MCL 400.9 and MCL 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was held on November 7, 2011, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included [REDACTED] FIM, and [REDACTED] FIS.

ISSUE

Whether the Department properly imposed a sanction on Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) cases, closed Claimant's FIP case and decreased Claimant's FAP benefits based on Claimant's failure to participate in employment-related activities.

FINDINGS OF FACT

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

1. Claimant was an ongoing recipient of FIP and FAP benefits and was required to participate in employment-related activities.
2. On September 1, 2011, the Department sent Claimant a Notice of Noncompliance informing Claimant of a failure to participate in employment-related activities and scheduling a triage appointment for September 15, 2011.

3. The Notice of Noncompliance stated, "If you want to have a telephone meeting, please call to schedule it before you miss your scheduled appointment." The phone number listed was Claimant's Department worker.
4. Claimant received the Notice of Noncompliance on Friday, September 9, 2011 and made several attempts to call her Department worker on September 12, 2011 and September 13, 2011, at first receiving a message that the worker's voice mail was full, and then finally leaving a message on the voice mail.
5. The Department worker did not return Claimant's phone call.
6. The Department sanctioned Claimant's FIP and FAP cases when she did not appear for the scheduled triage appointment.
7. On September 21, 2011, the Department sent Claimant a Notice of Case Action closing Claimant's FIP case and decreasing Claimant's FAP benefits, effective November 1, 2011 based on a failure to participate in employment-related activities without good cause.
8. On October 4, 2011, Claimant requested a hearing disputing the Department's action.

CONCLUSIONS OF LAW

Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

In order to increase their employ ability and obtain employment, work eligible individuals (WEI) seeking FIP are required to participate in the JET Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A; BEM 233A. Failing or refusing to attend or participate in a JET program or other employment service provider without good cause constitutes a noncompliance with employment or self-sufficient related activities. BEM 233A. Good cause is a valid reason for noncompliance which is beyond the control of the noncompliant person. BEM 233A. JET participants will not be terminated from a JET program without the Department first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. Good cause must be based on the best information available at the triage and must be considered even if the client does not attend the triage. BEM 233A. In processing a FIP closure, the Department is required to send the client a Notice of Noncompliance (DHS-2444) which must include the date(s) of the noncompliance, the reason the client was determined to be noncompliant, and the penalty duration. BEM 233A.

In the present case, the Department issued a Notice of Noncompliance to Claimant instructing her to call the Department if she wished to schedule a telephone hearing. Claimant made several attempts to telephone her Department worker in a timely manner, but the worker's voice mail was at first full, and when Claimant was finally able to leave a message on the worker's voice mail, the worker did not return Claimant's phone call in a timely manner. This in turn led to a closure of Claimant's case due to Claimant not attending the triage. The Department's misleading information and failure to return Claimant's phone calls in effect disallowed Claimant an opportunity to defend against the alleged nonparticipation in required activities. It is also noted that at the hearing the Department presented no Michigan Works notes, testimony, or other evidence substantiating Claimant's alleged nonparticipation.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly closed Claimant's FIP case. improperly closed Claimant's FIP case.

properly reduced Claimant's FAP benefits improperly reduced Claimant's FAP benefits.

DECISION AND ORDER

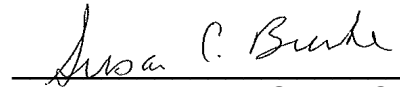
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

did act properly. did not act properly.

Accordingly, the Department's decision is AFFIRMED REVERSED for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the sanction applied to Claimant's FIP and FAP cases.
2. Initiate reinstatement of Claimant's FIP case, effective November 1, 2011, if Claimant is otherwise eligible for FIP.
3. Initiate restoration of Claimant's FAP benefits, effective November 1, 2011 if Claimant is otherwise eligible for FAP.
4. Issue FIP and FAP supplements, effective November 1, 2011, if Claimant is otherwise eligible for FIP and FAP.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 11/9/11

Date Mailed: 11/9/11

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.

2012-2374/SCB

- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

SB/sm

cc:

