

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-54351
Issue No.: 1038, 6000
Case No.: [REDACTED]
Hearing Date: June 25, 2012
County: Tuscola

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a in-person hearing was held on June 25, 2012, from Caro, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) and Child Dependent Care (CDC) case for failure to comply with work-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 a FIP recipient in Tuscola County.
2. Claimant was a mandatory Jobs, Education and Training (JET) Program participant.
3. Claimant allegedly did not meet participation requirements.
4. Claimant had been fired from a job.
5. Evidence shows that Claimant was fired for failing to meet performance standards.

6. The Department followed all triage procedures and found no good cause for Claimant.
7. Claimant was sanctioned for failing to comply with work-related activities.
8. This was Claimant's second penalty, and her case was closed for 180 days.
9. Claimant's case was closed on July 1, 2012.
10. On May 21, 2012, Claimant requested a hearing.

CONCLUSIONS OF LAW

Department policies are contained 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 Mich Admin Code, R 400.3101 through R 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 Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 ACS, R 400.3151 through R 400.3180.

☒ The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full-time must be referred to the JET Program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. Clients who have not been granted a deferral must participate in employment and/or self-sufficiency-related activities to increase their employability and to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called “noncompliance.” BEM 233A defines noncompliance as failing or refusing to, without good cause:

“... Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider....” BEM 233A pg. 1.

However, non-participation can be overcome if the client has “good cause.” Good cause is a valid reason for failing to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participatory person. BEM 233A. A claim of good cause must be verified and documented.

The penalty for noncompliance is FIP closure. BEM 233A.

A claimant must be fired for misconduct or absenteeism (not incompetence) in order to be sanctioned for noncompliance. BEM 233A.

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. BEM 233A.

After reviewing the facts of the case, the undersigned cannot reach the conclusion that Claimant was fired for misconduct and absenteeism and was, therefore, noncompliant.

The evidence in the case shows that Claimant was fired for failing to meet performance requirements, posting unsatisfactory scores in several areas. At no level can this failure to meet employment requirements be said to amount to misconduct. At most, it shows that Claimant was incompetent on the job. There are no allegations of maliciousness, destruction of property, or verbal threats contained in the performance review, which would be required to make a finding of misconduct.

Therefore, as there is no evidence that Claimant was fired for misconduct, and the evidence shows that Claimant was fired for incompetence, and because BEM 233A specifically states that being fired for incompetence is not noncompliance, Claimant could not have been noncompliant and must be returned to the JET program.

The Department has failed to meet their burden in showing that Claimant was actually noncompliant; no evidence has been submitted to prove this allegation. Therefore, the undersigned holds that the Department was incorrect to close and sanction Claimant's FIP case.

With regard to Claimant's CDC case, Claimant's CDC case was closed because Claimant was terminated from the JET program and no longer had a valid need for child care. However, as the undersigned has made the determination that Claimant is to be returned to the JET program, Claimant therefore still has need for the CDC program. As Claimant still has need for the CDC program, the decision to close the CDC case was in error.

However, it should be noted that, during the period of time between Claimant's improper termination and this decision, Claimant may not have had a need for CDC, as Claimant was not attending JET. The Department, at its discretion, may make a determination as to whether Claimant needed CDC during this time period and adjust payments for this time period accordingly.

DECISION AND ORDER

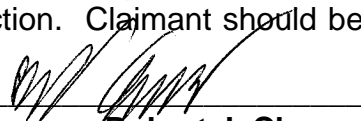
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

did act properly when . did not act properly when closing claimant's FIP and CDC case.

Accordingly, the Department's AMP FIP FAP MA SDA CDC 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. Reopen claimant's FIP and CDC case retroactive to the date of negative action and remove all penalties and sanctions associated with this action. Claimant should be returned to the JET program as soon as possible.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 12, 2012

Date Mailed: July 12, 2012

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.
- 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

RJC/pf

cc:

