

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201271887  
Issue No: 1021  
Case No: [REDACTED]  
Hearing Date: January 16, 2013  
Genesee County DHS #2

**ADMINISTRATIVE LAW JUDGE:** Christopher S. Saunders

**RECOMMENDED HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on August 10, 2012. After due notice, an in-person hearing was held on January 16, 2013 pursuant to two Order(s) Granting Adjournment signed November 7, 2012 and December 12, 2012 respectively. Claimant appeared and provided testimony. Claimant was represented by attorney [REDACTED]. Participants on behalf of the department included [REDACTED]. The department was represented by Assistant Attorney General [REDACTED].

Prior to the closure of the hearing record, both parties stipulated to extend the record to allow for the filing of post hearing briefs. Claimant's counsel additionally waived any time limits associated with the issuance of a decision and order in this matter to facilitate such. Claimant's post hearing brief was received by the Michigan Administrative Hearing System (MAHS) on January 23, 2013. The Department's post hearing brief was received by MAHS on February 20, 2013.

**ISSUE**

Whether the department properly determined Claimant's eligibility for Family Independence Program (FIP) benefits?

**FINDINGS OF FACT**

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

1. At all times relevant to this hearing, Claimant was a recipient of FIP benefits.
2. On July 31, 2012, the department mailed Claimant a Notice of Case Action (DHS 1605), informing Claimant that, effective September 1, 2012, her FIP benefits case would be closed for the reason that she has exceeded the lifetime

limit of 48 months on the receipt of state-funded FIP assistance. (Department Exhibit 1).

3. On August 1, 2012, Claimant requested a hearing protesting the department's closure of Claimant's FIP benefits. (Hearing Request)

### **CONCLUSIONS OF LAW**

Clients have the right to contest a department decision affecting eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, M.A.C. R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance is denied. MAC R 400.903(1).

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 administers the FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. The FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The FIP benefit program is not an entitlement. BEM 234. Time limits are essential to establishing the temporary nature of aid as well as communicating the FIP philosophy to support a family's movement to self-sufficiency. BEM 234. Effective October 1, 2011, BEM 234 restricts the total cumulative months that an individual may receive FIP benefits to a lifetime limit of 48 months for state-funded FIP cases for which no months were exempt.

In the case at hand, the department sent Claimant a notice of case action stating that her FIP benefits would be terminated as of September 1, 2012 because the department determined that Claimant has reached the 48 month limit for state-funded FIP assistance (see Department Exhibit 1). The department provided computer generated printouts that show that Claimant has received 48 months of state-funded FIP assistance since September 2008 (see Department Exhibits 2 & 3).

Claimant has asserted two arguments to show that the department erred in terminating her FIP assistance. The undersigned Administrative Law Judge (ALJ) will address each argument individually.

First, Claimant argues that her FIP assistance should not be terminated because her son has not reached 48 months of state-funded FIP assistance. Claimant asserts that because her son is a minor, he does not receive a count towards the FIP time limits. BEM 234 provides:

### **INDIVIDUAL TIME LIMIT**

The FIP time limits are applied at an individual level.

Individuals that receive a time limit count are:

- Adults age 18 and older who are eligible in the FIP group or disqualified due to a sanction listed in Sanctioned Months in this item.
- Minor parents who are the head-of-household.

Individuals who do **not** receive a FIP time limit count are:

- Dependent children age 18 and younger who are eligible in the FIP group.
- Ineligible grantees (for example, grandparents, SSI recipients.)
- Dependent children age 19 and in high school full-time who are eligible in the FIP group. (This applies only from October 1, 2007 to September 30, 2011.) BEM 234.

Claimant is correct in her assertion that her minor son should not have a time limit count for him individually. However, the department does not contend that Claimant's son has reached his time limit count. The computer generated time limit counts presented by the department relate solely to Claimant, and the notice of case action sent to Claimant only indicates that Claimant's FIP case is being terminated. There has been no evidence presented to indicate that Claimant's son is precluded from receiving FIP benefits individually or that he has reached the FIP time limit. Additionally, there has been no evidence presented to show that Claimant's son was at any time individually an active recipient of assistance. Therefore, the department has taken no action to suspend, reduce, or terminate assistance for Claimant's son.

MAC 400.903 lays out instances where recipients of assistance have a right to an administrative hearing within the Michigan DHS. This rule specifies when an opportunity for a hearing shall be granted:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. MAC 400.903(1).

At the time of Claimant's hearing, the department had not taken any action to suspend, reduce, discontinue or terminate any benefits for Claimant's son. Therefore, under the administrative rule discussed above, Claimant's son does not have a right to a hearing on the issues of termination of his FIP benefits. Additionally, as policy directs that FIP time limits are assessed individually, there has been no evidence presented to show that Claimant's son is in fact precluded from receiving FIP benefits individually.

Claimant further argues that the department's records do not establish that Claimant was receiving FIP assistance as of August 2008. Claimant asserts that because, at the

time of hearing, the department had not produced a FIP application that would coincide with the issuance of FIP benefits in August 2008, that the department has not established that Claimant received FIP benefits prior to April 2009. However, the department has produced computer generated printouts (Department Exhibits 2 and 3) which show the department's records of the issuance of FIP benefits. Additionally, the department did provide, as an attachment to its post-hearing brief (see Appendix B) a copy of an application for cash assistance signed by Claimant on August 8, 2008. Regardless of the submission on the 2008 application, the undersigned ALJ finds the computer generated printouts provided by the department, establishing the total months in which Claimant received state-funded FIP benefits, to be persuasive.

Claimant additionally argues that the department erred in its determination that Claimant had in fact received 48 countable months of state-funded FIP assistance. Claimant points to the change in policy regarding what months are countable towards an individual's 48 month time limit. The 48 month lifetime limit for state-funded FIP cases allows exemption months in which an individual does not receive a count towards the individual's 48 month lifetime limit. BEM 234. Exemption months are months the individual is deferred from Partnership, Accountability, Training, Hope (formerly WF/JET) for: (i) domestic violence; (ii) being 65 years of age or older; (iii) a verified disability of long-term incapacity lasting longer than 90 days; or (iv) a spouse or parent who provides care for a spouse or child with verified disabilities living in the home. BEM 234. The policy pertaining to the aforementioned exemptions became effective October 1, 2011.

Said policy is prescribed under MCL 400.57p which states:

Any month in which a recipient has been exempted from the JET program under section 57f(3) or (4)(b) shall not be counted toward the cumulative total of 48 months in a lifetime for family independence program assistance. Any month in which a recipient has been exempted from the JET program under section 57f(4)(e) or (f) may, in the department's discretion, be excluded from the count toward the cumulative total of 48 months in a lifetime for family independence program assistance.

Additionally, the pertinent portions of MCL 400.57f state as follows:

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(3) The following individuals are exempt from participation in the JET program:

(a) A child under the age of 16.

(b) A child age 16 to 18 who is attending elementary or secondary school full-time.

(c) A recipient who has medical documentation of being disabled or medical documentation of an inability to participate in employment or the JET program for more than 90 days because of a mental or physical condition.

(d) A recipient unable to participate as determined by the medical review team.

(e) A recipient aged 65 or older.

(f) A recipient of supplemental security income.

(g) A recipient of retirement, survivor, or disability insurance based on disability or blindness, or a recipient found eligible for retirement, survivor, or disability insurance based on disability or blindness who is in nonpay status.

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(4) The department may grant a temporary exemption from participation in the JET program to any of the following:

(b) An individual for whom certain program requirements have been waived under section 56i. An exemption under this subdivision shall not exceed a period of 90 days without a review by a department caseworker.

Prior to October 1, 2011, department policy had different rules pertaining to months that were exempt from the 48 month counter. Claimant provided as Exhibit D a copy of a DHS Assistance Application Information Booklet revised as of January 2008. Page two of Claimant Exhibit D illustrates the policy in place at that time in relation to months countable toward the 48 month limit. This policy states that months an individual is receiving FIP assistance will not be counted toward the 48 month time limit if the recipient is, among other exemptions, "working and following your Family Self-Sufficiency Plan." Additionally, Claimant cites 2006 PA 471 which states in pertinent part:

Sec. 57p. (1) Beginning April 1, 2007, any month in which any of the following occur shall not be counted toward the cumulative total of 48 months in a lifetime for family independence assistance:

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(b) The recipient is employed and meeting the requirements of his or her family self-sufficiency plan.

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Claimant argues that the months she was receiving FIP assistance, working, and meeting the requirements of her Family Self-Sufficiency Plan prior to October 1, 2011, should not count toward her 48 month time limit, as the above-cited policy specifically excluded those months from her countable 48 month limit. The department did not assert that at any time prior to October 1, 2011 Claimant was not following her Family Self-Sufficiency Plan. Additionally, Claimant provided evidence showing that from July 2009 through December 2010, Claimant was employed at a Work Study job through Mott Community College (see Claimant's Exhibits B, C, G, and H). As such, Claimant contends that the months where she was working and following her Family Self-Sufficiency Plan should not be counted towards her 48 month time limit as per the policy in place regarding months countable toward the 48 month limit prior to October 1, 2011.

Claimant argues that the October 1, 2011 policy pertaining to which months should be counted towards the 48 month limit should not be applied retroactively, as the new policy allows months to be counted that were not previously so allowed under the prior policy.

The department contends that BEM 234 does not retroactively apply to Claimant as only Claimant's future FIP assistance will be affected; the department is not purporting to take away any previous months of FIP assistance or to recoup any benefits previously issued. The department further asserts that Claimant does not have a vested right to FIP benefits as the FIP program is not an entitlement program.

Although there is no entitlement to FIP benefits, claimants do have a right to receive said benefits as long as they otherwise meet all eligibility requirements. Furthermore, claimants have a right to a hearing if said benefits are to be reduced or terminated and a right to have notice pertaining to a change in those benefits.

In *Landgraf v USI Film Products*, 511 US 244 (1994), the US Supreme Court addressed the issue of statutes being applied retroactively. The court stated, "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *Id* at 265. In this case, the court states that the legislature's intent as to the reach of the statute must first be examined prior to a determination of if there is a retroactive effect. The court states,

When, however, the statute contains no such express command, the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. If the statute would operate retroactively, our traditional presumption teaches that it does not govern absent clear congressional intent favoring such a result. *Id* at 280.

Additionally, the court stated that the issue of retroactivity must be addressed on an individual basis. The court stated,

A statute does not operate “retrospectively” merely because it is applied in a case arising from conduct antecedating the statute’s enactment...or upsets expectations based in prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. The conclusion that a particular rule operates “retroactively” comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event. *Id* at 269, 270.

In this case the undersigned ALJ finds that applying BEM 234 to Claimant’s FIP case in counting months that were exempt prior to October 1, 2011 toward the Claimant’s 48 month limit, retroactively applies MCL 400.57p and MCL 400.57f. While on its face BEM 234 does not appear to be legally defective, the application thereof; counting months toward the 48 month limit that were previously exempt, retroactively applies MCL 400.57p and MCL 400.57f in violation of the precedent set by the US Supreme Court in *Landgraf*. At the time Claimant received FIP benefits prior to October 1, 2011, she had an expectation that certain months would not be applied to her 48 month time limit. Counting months toward Claimant’s 48 month limit that were previously exempt attaches new legal consequences to Claimant’s prior receipt of FIP benefits during those months. As there is no indication of legislative intent to apply the above statutes retroactively, it cannot be said that this action was contemplated in the drafting thereof. Consequently, the undersigned ALJ finds that the department should not have counted the months that were exempt prior to October 1, 2011 toward Claimant’s 48 month time limit after the change in which months would qualify as exempt.

However, because Claimant challenges the determination of her FIP eligibility on the basis that the policy and statute in question are being applied retroactively, Claimant’s hearing request is not within the scope of authority delegated to this ALJ by the department’s Director. Specifically, the Director’s July 31, 2011 Delegation of Hearing Authority provides in relevant part:

Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy. ... *A presiding administrative hearing officer shall make a recommended decision to the Policy Hearing Authority in those cases . . . in which the presiding administrative hearing officer believes Department policy to be out of conformity with case law, statute, or promulgated regulations* . The Policy Hearing Authority will issue a final decision in such cases, and the final decision shall be precedent binding on the administrative hearing officers. (Emphasis added).

Consequently, the Administrative Law Judge makes the following recommended decision.

**RECOMMENDED DECISION**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not properly determine that Claimant has reached the 48-month limit for state-funded FIP assistance. Therefore, it is recommended that the department's closure of Claimant's FIP benefits case is **REVERSED** and it is further recommended that the department initiate a redetermination of Claimant's FIP eligibility to determine the number of countable months Claimant has toward the 48 month limit.

**EXCEPTIONS**

The parties may file Exceptions to this Recommended Decision within fifteen (15) days after it is issued and entered. An opposing party may file a response within five (5) days after Exceptions are filed. Any such Exceptions shall be filed with Maura Corrigan, Director, Department of Human Services, 235 S. Grand Ave., P.O. Box 30037, Lansing, Michigan 48909.

/s/  
Christopher S. Saunders  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: April 23, 2013

Date Mailed: April 24, 2013

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