

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012285
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: December 5, 2011
County: Wayne County DHS (41)

ADMINISTRATIVE LAW JUDGE: Andrea J. Bradley

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 telephone hearing was held on December 5, 2011, from Detroit, Michigan. Participants on behalf of Claimant included Legal Counsel for the Claimant, [REDACTED], the Claimant, [REDACTED], and her witness, [REDACTED]. Participants on behalf of Department of Human Services (Department) included Assistant Attorney General, [REDACTED], [REDACTED], Family Independence Specialist, and [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly deny the Claimant's request for a two-parent deferral from the Jobs Education and Training (JET) program requirements in order to care for a disabled child?

FINDINGS OF FACT

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

1. The Claimant is an on-going FIP recipient with a household size of three, which consists of two adults and a five-year old disabled child.
2. On September 12, 2011, the Claimant submitted a medical needs form (DHS-54- E) seeking a two-parent deferral from the JEt program requirements based on the need to care for a disabled child.

3. The disabled child's doctors have stated that both parents are required in the home 24 hours per day, 7 days per week. See Claimant's Exhibit A.
4. The Department approved a one-person deferral based on the need to care for a disabled child.
5. The Department referred the other parent to JET for 35 hours per week.
6. The Claimant filed a request for hearing disputing the JET referral and for one-parent.

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 Department policy states that Work Eligible Individuals (WEIs) are FIP/RAPC clients who count in the state and/or federal work participation rate. All WEIs are required to participate in work related activities (core or non-core) for a minimum number of hours based on case circumstances. BEM 228. The Department policy has set forth the required hours that the WEI is to participate in work related activities. BEM 228. Specifically, a single-parent household with a child that is less than six years old must participate in twenty-hours of work-related activities per week. BEM 228. A single-parent household with a child six years or older must participate in 30 hours per week of work related activities. BEM 228. And a two-parent household must share in the required hours. BEM 228. The Department policy further states that with respect to WEI's, a two-parent household is considered a single-parent household when one parent is needed in the home to care for a spouse/child who is disabled. BEM 228.

The Department policy also sets forth the standard for NON-WEIs in BEM 228. Non-WEIs are FIP/RAPC clients who do not count in the state and/or federal work participation rate. Non-WEIs are not required to participate in work related activities for a minimum number of hours but may volunteer for core or non-core activities. BEM 228. The Department policy goes on to list the type of Non-WEI's, and among those identified are: an adult FIP/RAPC client providing care for a child who is disabled and living in the home when the child does not attend school full-time. BEM 228. Note: Verification of the disability and that the care is needed must be supported by medical documentation; see BEM 230A, Care of a Disabled Spouse or Disabled Child. BEM 228.

BEM 230 states that A spouse or parent who provides care for a spouse or child with disabilities living in the home is not a WEI and is not referred to the work participation program if: (1) the spouse/child with disabilities lives with the spouse/parent providing care; and (2) a doctor verifies all of the following in writing or by using a DHS-54A, Medical Needs form or DHS-54E, Medical Needs -Work Participation Program: (a) the spouse/child with disabilities requires a caretaker due to the extent of the disability; (b) the spouse/parent is needed in the home to provide care; and (c) the spouse/parent cannot engage in an employment-related activity due to the extent of care required. BEM 230.

In the instant matter, the Department, through its counsel, testified that it referred one parent in the household to JET and required him to engage in 35 hours of work related activities per week. The Department further stated that it approved a medical needs deferral for the Claimant based on her need to provide in home care to her disabled child. The Department contended that the policy does not allow for both of the parents to receive a deferral from work-related activities to care for a disabled child.

The Claimant, through her counsel, provided evidentiary support and credible testimony that both parents are needed in the home to care for the disabled child. Specifically, the letter submitted by the disabled child's treating source states: "...he requires 1:1 holding 24 hours a day. His parents are unable to put him down for even short periods at a time. He receives home bound schooling and requires one parent to hold him continuously while the other parent provides his education and prepares meals and maintains the household." See Claimant's Exhibit A. The letter from the physician further states that "both parents are required in the home 24 hours a day, 7 days a week. If either parent is outside the home, it will cause undue stress to [the child] and could exacerbate his health concerns." Id. The Claimant also submitted the required DHS forms to verify the child's disability.

In looking at the applicable policy and the medical documentation as set forth above, both of the parents in this household are Non-WEI's and therefore both exempt from the JET work requirements. The Department argued that the policy does not include language allowing for two-parents to care for a disabled child. However, in reading the policy, there is no specific language that would exclude the possibility that a second parent is needed to provide care for a disabled child. Under the policy, all that is needed is that each parent meet the requirements set forth in BEM 230. In this case, the medical evidence made it clear that each parent is needed as a caretaker due to the extent of the disability; each parent is needed in the home to provide care; and neither parent can engage in employment related activities due to the extent of the care required. Therefore, both parents meet the Non-WEI requirements set forth in BEM 230.

It should be noted that the policy language related to a two-parent household acting as a single parent household for the purpose of fulfilling the work related hours is specifically related to WEIs. And in this case, both the parents in this household are

considered WEIs. It should also be noted that at the time the Department assigned the one parent to JET for 35 hours per week, the child in the home was under six; therefore, his JET required hours should have only been twenty hours per week. That alone is reversible error, but the Department's actions are being reversed based on the finding that both parents are Non-WEIs and as such are not required to participate in work related activities.


Based on the above law and facts, the Department has failed to establish that it acted in accordance with Department policy when required one parent to engage in work related activities. Accordingly, the action taken by the Department is REVERSED.

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 it denied the two-parent deferral for caring for a disabled child.

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

1. The Department shall remove the JET referral from the Claimant's group and document the two parents as Non-WEIs.


Andrea J. Bradley
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/14/11

Date Mailed: 12/14/11

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.
- 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

AJB/hw

cc:

