

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201233305
Issue No: 1005
Case No: [REDACTED]
Hearing Date: March 28, 2012
County DHS: Muskegon

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

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 January 26, 2012. After due notice, a telephone hearing was held on March 28, 2012. Claimant appeared and provided testimony. The department was represented by department personnel.

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 [REDACTED], the department mailed Claimant a Notice of Case Action (DHS 1605), informing Claimant that, effective [REDACTED], her FIP benefits case would be closed for the reason that she has received 60 months or more of federally-funded FIP benefits, which is the time allowed for eligibility. (Department Exhibits 1-10)
3. On or about [REDACTED], Claimant requested a hearing, protesting the department's closure of her 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, MAC 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 FIP cases related to the Social Welfare Act provisions (state-law FIP cases) and 60 months for those cases funded by federal Temporary Assistance for Needy Families (TANF) funds. Notwithstanding the 48-month lifetime limit for state-law FIP cases, a family is not eligible to receive FIP assistance beyond 60 consecutive or non-consecutive TANF months. BEM 234. Federally-funded TANF countable months began to accrue for FIP on October 1, 1996. BEM 234.

In this case, the department presented evidence establishing that Claimant had received 93 months of TANF-funded FIP assistance as of July 1, 2011. Claimant disagreed with the department's calculation and instead insisted that she had received less than 60 months of TANF-funded FIP assistance.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds the computer-generated printouts provided by the department, establishing the total months in which Claimant received federally-funded FIP benefits, to be persuasive. This Administrative Law Judge further finds Claimant's

disagreement with the department's calculation to be unpersuasive in the absence of any supporting documentation.

Accordingly, the Administrative Law Judge finds that, based on the competent, material, and substantial evidence presented during the hearing, the department acted in accordance with policy in closing Claimant's FIP benefits case effective [REDACTED], for the reason that Claimant has reached the 60-month limit of federally-funded FIP assistance and was therefore, no longer eligible to receive such assistance.

However, because the department's determination of Claimant's eligibility for FIP benefits was based on the department's application of a policy and statute the validity of which remains the subject of a pending court challenge,¹ Claimant's hearing request is not within the scope of authority delegated to this Administrative Law Judge 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 acted in accordance with policy in closing Claimant's FIP benefits case effective [REDACTED], for the reason that Claimant has reached the 60-month limit of federally-funded FIP. Therefore, it is recommended that the department's closure of Claimant's FIP benefits case is **UPHELD**.

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

¹ *Smith, et al v Department of Human Services*, ___ N.W.2d ___, 2012 WL 2401397, Mich. App., June 26, 2012 (NO. 309447, 309894); *Smith, et al v. Department of Human Services*, 820 N.W.2d 773, ___ Mich ___, Sept. 21, 2012.

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/
Marya A. Nelson-Davis
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 01/25/2013

Date Mailed: 01/28/2013

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.

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.

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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

MAND/kl

cc:

