

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

IN THE MATTER OF:



Reg. No.: 201357874
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: November 5, 2013
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 5, 2013, from Lansing, Michigan. Participants on behalf of Claimant included herself. Participants on behalf of the Department of Human Services (Department) included FIS [REDACTED] and FIM [REDACTED]. There is no evidence in the record supporting a Food Assistance Program (FAP) issue in this case. The Food Assistance Program (FAP) portion of the case is dismissed.

ISSUE

Did the Department properly sanction Claimant's Family Independence Program (FIP) for failure to participate in employment and/or self-sufficiency related activities?

Did the Department properly sanction Claimant's Food Assistance Program (FAP) for failure to participate in employment and/or self-sufficiency 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 Family Independence Program (FIP) benefits. It was mandatory for Claimant to participate in Partnership, Accountability, Training, Hope (PATH). Claimant's participation requirement was being met through employment.
2. On June 5, 2013, Claimant was sent a Notice of Case Action (DHS-1605) stating that the Family Independence Program (FIP) would be sanctioned.

3. On June 14, 2013, Claimant was sent a Notice of Non-Compliance (DHS-2444) which scheduled a meeting for June 20, 2013.
4. On June 20, 2013, Claimant attended the scheduled meeting.
5. On June 24, 2013, the Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.
6. On June 27, 2013, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Department of Human Services Bridges Eligibility Manual (BEM) 233A Failure to Meet Employment and/or Self-Sufficiency Related Requirements: FIP (2013) and Department of Human Services Bridges Eligibility Manual (BEM) 233B Failure to Meet Employment Requirements: FAP (2013) provide the Department requirements and procedures relevant to this hearing.

The Department seeks to sanction Claimant's Family Independence Program (FIP) based on information they obtained, that Claimant abandoned a job and was terminated. Evidence submitted by the Department, to prove the job quit, is a statement written by a Department employee asserting a HR Representative named [REDACTED] told the Department employee that Claimant abandoned the job and was then terminated.

Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

With regard to the evidentiary rules cited above, the "statement" the Department wishes to prove, is that Claimant "abandoned the job." The Department got the information from HR Representative [REDACTED]. Other testimony at this hearing established Claimant's employment, which ended, was in a factory and that [REDACTED] works at a placement firm that is not at the factory location. Therefore, [REDACTED] statement that Claimant "abandoned the job" was based on what she was told by some unidentified person at the factory.

The Department employee testifying that Claimant "abandoned the job" was not at the factory and does not have personal knowledge of what happened. Belinda was not at the factory and does not have personal knowledge of what happened. Rule 602 cited above does not allow for testimony on a matter unless the witness has personal knowledge.

The unidentified person at the factory was not present at this hearing and did not state that Claimant "abandoned the job" while testifying at this hearing. Both a written and verbal statement made by the Department employee who spoke to [REDACTED] was admitted into evidence for this hearing, The Department employee's statement was offered in order to prove that Claimant "abandoned the job".

The Department employee's statements are hearsay within hearsay. The only person who might have personal knowledge is the unidentified "declarant" of the statement to be proven. If Belinda had been present at this hearing, her testimony that Claimant "abandoned the job" would be hearsay because she is not the "declarant." The

Department employee's testimony of what [REDACTED] said is hearsay because the employee is not the declarant of [REDACTED] hearsay statement. Therefore the Department employee's statement is hearsay which contains hearsay. The unidentified "declarant's" statement that Claimant "abandoned the job" is hearsay within hearsay.

The Michigan Rules of Evidence preclude hearsay because it is not reliable. Allowing hearsay also prevents any opportunity to question or cross examine the "declarant." Due process requires the opportunity to confront a witness in order to determine and present the specific details of their personal knowledge of the facts they are testifying about. Rule 803 cited above provides for a few exceptions to the inadmissibility of hearsay evidence. The exceptions identified exist because the unique circumstances that produced the hearsay are sufficient to establish that the hearsay is accurate and reliable.

Exception 6, cited above, is applicable to both Department and PATH records. During Department of Human Services' hearings, case notes made by a PATH worker or DHS case worker are frequently in evidence. The following example is provided to show both the value and limitations of the exception.

Client AB submits an application for Food Assistance Program (FAP) benefits. AB is interviewed by case worker CD. CD makes a case note entry that AB reported earned income of [REDACTED] per week and was sent a Verification of Employment (DHS Form 38). AB does not return the required verification and the application is denied. AB requests a hearing. CD is not present at the hearing but the case notes are in evidence.

The case notes are hearsay. They are admissible as an exception because they were made by a "person with knowledge" (CD) as a regular practice of a case worker's duty. Those circumstances create a very high probability that the case notes are accurate and reliable. The case notes can be submitted as proof that AB reported earned income of [REDACTED] and was sent a Verification of Employment (DHS Form 38). The case notes CANNOT be submitted as proof that AB was in fact receiving [REDACTED] per week of earned income. CD has personal knowledge of what AB said during the interview. CD DOES NOT have personal knowledge of whether AB was in fact working and if so how much AB was getting paid. That is why verification of the income must be obtained.

PATH employment related sanction hearings are notoriously plagued with this form of evidentiary issue. A huge number of Department and PATH case workers are oblivious to the fact that case notes are NOT sufficient to prove anything a worker records. The hearsay exception is limited to recorded facts (statements) which the recorder has personal knowledge of and includes the words of AB's statement. The fact that CD recorded AB's statement does not provide any probability that AB's statement is accurate or reliable.

The Department carries an initial burden of providing sufficient evidence to show their proposed action is in accordance with their policies. The evidence present in this case is not sufficient to establish that Claimant "abandoned the job."

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department failed to meet their initial burden of providing sufficient evidence to show Claimant “abandoned the job” and to satisfy the burden of showing that it acted in accordance with Department policy when it sanctioned Claimant’s Family Independence Program (FIP) for failure to participate in employment and/or self-sufficiency related activities.

DECISION AND ORDER

Accordingly, the Department’s decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant’s Family Independence Program (FIP) benefits.
2. Supplement any benefits Claimant was otherwise eligible for but did not receive because of this incorrect action.

/s/
Gary F. Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 11/12/2013

Date Mailed: 11/12/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;

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- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

GFH/sw

cc:

