

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

IN THE MATTER OF:

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██████████
████████████████████

Reg. No.: 15-000697
Issue No.: 3001
Case No.: ██████████
Hearing Date: February 12, 2015
County: WAYNE-55 (HAMTRAMCK)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 12, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████ ██████ Eligibility Specialist.

ISSUE

Did the Department properly close the Claimant's Food Assistance (FAP) case due to failure to participate in employment 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. The Claimant was an ongoing recipient of Food Assistance (FAP).
2. The Claimant was suspended from his job without pay on or about November 11, 2014. Exhibit B
3. The Department issued a Notice of Case Action on January 14, 2015 which closed the Claimant's Food Assistance effective on January 8, 2015, ongoing. The Department found the Claimant ineligible because "you or a group member failed to participate in employment and/or self-sufficiency related activities, or you quit a job or were fired or reduced your hours without good cause. Manual Items(s): BEM 233A, 233B and 233C." Exhibit A.

4. The Claimant requested a timely hearing on January 20, 2015 disagreeing with the Department's closure of his FAP case.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The issue in this case concerns whether the Department's closure of the Claimant's FAP case was in conformance with Department policy regarding FAP Non Compliance with employment related activities. The Department issued a Notice of Case Action on January 14, 2015, closing the Claimant's case effective January 8, 2015. The reason stated for the closure/denial was "you or a group member failed to participate in employment and/or self-sufficiency related activities, or you quit a job or were fired or reduced your hours without good cause. Manual Items(s): BEM 233A, 233B and 233C." Exhibit A. The Notice of Case Action does not indicate the period of disqualification for receipt of FAP.

The Department presented evidence that the Claimant reported he lost his job on January 14, 2015. The Claimant provided the Department a Memorandum which the Department relied upon as the basis for FAP case closure. The memorandum was not on company letterhead and was not signed by the employer. The memorandum indicates it is sent RE: Termination and is dated November 12, 2014. It states in part: "Accordingly, you are suspended without pay and a recommendation to the Finance Board to terminate your employment. We will notify you of the Board's decision once we receive it." Exhibit B.

The Claimant indicated he had not received any further information from the employer as of the hearing indicating he was officially fired. The Memorandum states: "You provided false statement to Administration in regards to an accident you had in a company vehicle. Also you abandoned your shift and used the company vehicle for personal business." The Claimant denied the allegations at the hearing, but did admit use of the company vehicle for personal business. The Claimant's testimony was deemed credible.

In this case, the Department closed the Claimant's FAP case due to his suspension from his job. The Memorandum relied upon by the Department does not indicate the Claimant was fired. The Claimant's testimony was that he was suspended. The Food Assistance policy regarding determinations of noncompliance and good cause does not afford the Department the ability to close a FAP case under these circumstances.

BEM 230 B which governs Failure to Meet Employment Requirements: FAP allows the Department to make a disqualification under the following circumstance:

Non-deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. However, unlike cash benefits, which are tied to participation in Partnership. Accountability. Training. Hope. (PATH), there are no hourly PATH requirements for the Food Assistance Program. In order to receive FAP benefits, non-deferred adults must comply with the following work requirements:

Non-deferred adults who are already working may not do any of the following:

- Voluntarily quit a job of 30 hours or more per week without good cause.
- Voluntarily reduce hours of employment below 30 hours per week without good cause. BEM 230B, (10/1/13) p. 2.

Non-deferred adults who are not working or are working less than 30 hours per week must:

- Accept a bona fide offer of employment.
- Participate in activities required to receive unemployment benefits if the client has applied for or is receiving unemployment benefits.

Disqualify FAP clients for noncompliance if the applicant or recipient is neither deferred (see deferrals in this item) nor noncompliant with one of the FAP work requirements listed above.
Emphasis supplied.

Clearly, based upon the evidence presented, the Claimant did not voluntarily quit work or voluntarily reduce hours of employment below 30 hours a week, the only two FAP work requirements that an already working individual can be disqualified for. Thus, no basis exists in the policy referenced above applicable to this Claimant's FAP case to support a closure based upon being fired without good cause. Further, the evidence as presented does not support the conclusion that the Claimant was fired; the Claimant

had not been fired as of the hearing. The evidence only supports that the Claimant was suspended without pay.

It does appear that the Department erroneously relied upon policy found in BEM 233 A Failure to Meet Employment and/or Self-Sufficiency –Related Requirements- FIP when closing the Claimant's FAP case. This policy only applies to recipients of FIP Cash Assistance. The evidence presented did not establish that the Claimant was receiving FIP benefits. This policy provides in the section entitled, Refusing Suitable Employment, that being fired can form a basis for finding noncompliance for a refusal of employment and provides in pertinent part:

Refusing suitable employment means doing **any** of the following: ...

Firing for misconduct or absenteeism (not for incompetence).

Note: 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. It includes, but is not limited to, drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work. BEM 233A (10/1/14), p.3.

This provision regarding firing does not appear in the provisions cited above for FAP cases and work participation, therefore reliance on policy applicable to FIP cases was in error as FIP policy found in BEM 233A clearly does not apply to the Claimant's FAP case closure.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed the Claimant's FAP case for failure to participate in employment activities.

DECISION AND ORDER

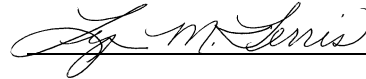
Accordingly, the Department's decision is

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. The Department shall reinstate the Claimant's FAP case effective January 8, 2015.

2. The Department shall process a FAP supplement to the Claimant for any FAP benefits the Claimant is entitled to receive in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/13/2015**

Date Mailed: **2/13/2015**

LMF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]