

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-006482
Issue No.: 1008, 3008
Case No.: ██████████
Hearing Date: June 01, 2015
County: WAYNE-DISTRICT 57
(CONNER)

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on June 1, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, FIS, and ██████████, FIM.

ISSUE

Did the Department properly close the Claimant's Food Assistance (FAP) and FIP Cash Assistance (FIP) for quitting her employment?

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 a guardian of two minor children, and as such was an ineligible grantee. The Claimant was receiving FIP and FAP benefits. The Claimant was not a recipient of FIP but was receiving FAP benefits.
2. The Department closed the Claimant's FIP and FAP case when she quit her employment (resigned) due to reduced hours and imposed a 3 month sanction on her FIP and FAP cases effective May 1, 2015. The FIP was closed due to failure to comply with employment-related activities and quitting a job without good cause. Exhibit 1.

3. The Department also closed the Claimant's FAP benefits for failure to provide loss of employment verification and for quitting a job. FAP was closed for 1 month only and Claimant was advised she could reapply. Exhibit 1.
4. A Notice of Non-Compliance was sent to the Claimant on April 17, 2015 advising Claimant of a triage at 9:00 a.m. on April 24, 2015. The Claimant did not attend the triage. The Department found no good cause for quitting a job. Exhibit 2.
5. The Department sent the Claimant a Verification Checklist to be completed by her employer which was not returned by the Employer.
6. The Claimant sent a letter to her then employer on January 20, 2015 resigning due to shift scheduled and to take a nurse exam. The Claimant did not take the exam. Exhibit 7.
7. The Claimant rescinded her resignation effective immediately on January 20, 2015 by letter on January 27, 2015. Exhibit 8.
8. The Claimant resigned her employment with Pathways on March 25, 2015 effective that day. No reason for the resignation is given. Exhibit 9.
9. The Claimant requested a hearing on April 28, 2015 protesting the closure of her FIP and FAP case.
10. Pay stubs submitted by the Claimant at the hearing indicate that the Claimant's work hours went from on average of 35 to 40 hours to 8 hours weekly based upon her pay of March 6, 2015. Claimant Exhibit 1.
11. The Department received a verification of employment after the due date but before the Claimant's case closed on May 1, 2015. The verification of employment was not provided by the Department at the hearing.
12. The Claimant requested a hearing on April 28, 2015 protesting the closure of her FIP and FAP case due to ending her employment due to lack of hours.

CONCLUSIONS OF LAW

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

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, the Department closed the Claimant's FIP and FAP case on May 1, 2015. The FIP case closed due to Claimant's alleged quitting employment without good cause. The Department at the hearing stated that the Claimant was an ineligible grantee when she applied for FIP. Policy found in BEM 233B provides:

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause: ...

Note: Do not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete the FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233a (May 1, 2015) p. 8

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. Depending on the case situation, penalties include the following:

Claimant, as the legal guardian for her niece and nephew, is not a mandatory FIP EDG member. BEM 210 (July 1, 2013), pp 4, 5. Non-parent caregivers who are not eligible for cash assistance or choose not to request cash assistance are classified as ineligible grantees. BEM 210, p 7; BEM 515 (July 1, 2013), p 2. Ineligible caretakers are not recipients of FIP, although the caretaker receives FIP benefits for the children as the children's protective payee. BEM 230A (July 1, 2013), p. 14; BAM 420 (July 1, 2013), pp 1, 6. While a group is ineligible for FIP benefits if a *WEI* (work-eligible individual) in the group is subject to an employment-related noncompliance while a FIP application is pending, an ineligible caretaker is a *non-WEI*. BEM 233A (July 1, 2013), p 5; BEM 228 (July 1, 2013), p 4. Furthermore, a FIP three-month, six-month or lifetime penalty is not applied to ineligible caretakers. BEM 233A, p 7.

Based upon these provisions, it appears that the Claimant as an ineligible grantee is not subject to FIP closure for noncompliance and is not subject to a sanction. As the Department closed the FIP case and imposed a 3 month sanction, its actions were contrary to Department policy and thus the FIP case, based upon the evidence presented, must be reinstated. As an ineligible grantee, the Claimant is not eligible for FIP benefits.

FAP

In this case the Claimant's FAP case was closed after the Department determined that she did not complete a loss of employment verification and voluntarily quit her job. The employment verification was received by the Department prior to case closure on May 1, 2015 but it was not timely. During the hearing the Claimant indicated that she resigned her employment when her work hours were cut from 40 hours to 8 hours every two weeks. In general, Department policy requires that FAP non-deferred recipients must accept and maintain employment. In this case the Claimant did not attend the triage and thus did not present evidence at that time regarding the conditions of her employment ending. The Claimant testified that she received the noncompliance notice after the triage date. Claimant also testified that she refused an offer of employment after she left her job because the work shift was midnights. Ultimately the Claimant's employer provided a verification of loss of employment but after the due date.

The policies in this item apply to all FAP applicants and recipients age 16 and over. Noncompliance without good cause, with employment requirements for FIP/RCA may affect FAP if both programs were active on the date of the FIP noncompliance; see BEM 233A; BEM 233B (July 1, 2013) p.1.

For noncompliance to occur when FAP only is considered, as is the case here as the Claimant was not a FIP recipient as an ineligible grantee, the recipient of benefits must quit a job of 30 hours or more per week without good cause. FAP recipients who are not working or are working less than 30 hours per week must: accept a bona fide offer of employment which means a definite offer paying wages of at least the applicable state minimum wage. Good cause must be determined in these instances. BEM 233B p. 5.

Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. Evaluate each client's work requirement before imposing a disqualification; see BEM 230B

DEFERRALS.

For the first occurrence, disqualify the person for one month or until compliance, whichever is longer. BEM 233B, p. 6

GOOD CAUSE FOR NONCOMPLIANCE

Good cause is a valid reason for failing to participate in employment and/or self-sufficiency-related activities or refusing suitable employment. Investigate and determine good cause

before deciding whether to imposing a disqualification. Good cause includes the following:

Deferred

The person meets one of the deferral criteria; see DEFERRALS in BEM 230B.

BEM 233B 8 of 12

Meets Participation Requirements

The person meets participation requirements; see DEFERRALS in BEM 230B.

Wage Under Minimum

Except for sheltered workshops, the wage offered, including tips, is less than the applicable state minimum wage.

Client Unfit

The client is physically or mentally unfit for the job, as shown by medical evidence or other reliable information.

Health or Safety Risk

The degree of risk to health or safety is unreasonable.

Illness or Injury

The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client.

Religion

The working hours or nature of the employment interferes with the client's religious observances, convictions or beliefs.

Net Income Loss

The employment causes the family a net loss of cash income.

No Child Care

Child Development and Care (CDC) is needed for a CDC-eligible child, but none is adequate, suitable, affordable and within reasonable distance of the client's home or work site; see BEM 703.

No Transportation

Reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities.

Comparable Work, Job Quits

The client obtains comparable employment in salary **or** hours to the job that was lost.

Note: When a client quits a job and during the negative action period secures employment, the penalty still applies unless the new job meets the definition of comparable work above.

Education or Training

The employment interferes with enrollment at least half time in a recognized education or job training program.

Long Commute

Total commuting time exceeds either:

Two hours per day, not including time to and from child care facilities.

Three hours per day, including time to and from child care facilities.

Unreasonable Conditions

The employer makes unreasonable demands or conditions (for example, working without being paid on schedule).

Forced Move

The person must quit a job and move out of the county due to another group member's:

Employment.

Employment and/or self-sufficiency-related activities.

Enrollment at least half time in a recognized education or job training program.

Retirement

The employer recognizes the person's resignation as retirement.

Unkept Promise of Work

For reasons beyond the person's control, promised employment of at least 30 hours per week (or the state minimum wage times 30 hours) does not materialize or results in less than that minimum.

Union Involvement

The person must join, resign from, or refrain from joining a labor organization as an employment condition.

Strike or Lockout

The work is at a site subject to a strike or lockout (not enjoined by federal law) at the time of the offer.

Work Not Familiar

In the first 30 days after determined a mandatory FAP participant, the only employment offered is outside the person's major field of experience. BEM 233B, p. 7-10.

There are several reasons why the Deferral might apply under the evidence presented, the first and most apparent is net loss of income. When the employment hours are cut to 8 hours weekly, this reason seems to apply. Thus the Claimant had a deferral reason to resign her employment and the FAP case; thus, it is determined no disqualification for noncompliance with FAP work requirements should have been imposed

In order to reestablish FAP eligibility department policy requires:

A noncompliant person must serve a minimum one-month or six-month disqualification period unless one of the criteria for ending a disqualification early exists.

End the disqualification early if the noncompliant person either: obtains comparable employment in salary or hours to the job lost. BEM 233B, p 11 -12

If the noncompliant person does not meet the criteria above for ending a disqualification early, a five-day, 20-hour compliance test must be completed before eligibility is regained. In addition, the minimum disqualification period must be served.

If the disqualification caused FAP closure, and all eligibility criteria for FAP eligibility are met, open the case effective the latter of:

The date the person agreed to comply.
The day after the disqualification ended.
The date of application.

In conclusion, it is determined that the Department did not properly impose a one month disqualification for FAP because the Claimant's earnings from her job were so reduced as to result in a cash loss. Further the Department properly closed the Claimant's case for failure to receive the verification of loss of employment by the due date. The Claimant may reapply at any time; however, if Claimant wishes to receive FAP benefits for herself, she must work more than 30 hours per week in order to be eligible unless otherwise deferred as referenced above.

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 acted in accordance with Department policy when it closed the Claimant's FAP case for failure to return the verification of loss of employment timely.

The Department did not act in accordance with Department policy when it closed the Claimant's FIP case due to noncompliance with FIP-related work requirements as Claimant was an ineligible grantee.

The Department did not act in accordance with Department policy when it found Claimant to be disqualified for failure to quit her job without good cause.

DECISION AND ORDER

Accordingly, the Department's decision is:

AFFIRMED IN PART with respect to with respect to its closure of the Claimant's FAP case for failure to return the verification timely, and

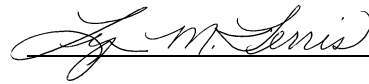
REVERSED IN PART with respect to the imposition of a disqualification and closure of FAP benefits due to quitting her job, and

REVERSED IN PART with respect to closing Claimant's FIP case and imposing a sanction as the Claimant, as an ineligible grantee, is not subject to these sanctions.

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 FIP case and issue a FIP supplement to the eligible group minor children.

2. The Department shall remove the first sanction imposed for noncompliance with FIP PATH work requirements without good cause and remove the one month disqualification from receipt of FAP benefits from the Claimant's case record and Department's records.



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

Date Signed: **6/5/2015**

Date Mailed: **6/5/2015**

LMF / cl

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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]