

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

**IN THE MATTER OF:**



Reg. No.: 201219646  
Issue No.: 1038  
Case No.: [REDACTED]  
Hearing Date: March 1, 2012  
County: Wayne DHS (18)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 March 1, 2012 from Detroit, Michigan. Participants on behalf of Claimant included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager, and [REDACTED], Specialist.

**ISSUE**

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) benefits due to Claimant's alleged noncompliance with Work Participation Program (WPP) participation.

**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 FIP benefit recipient.
2. Claimant was deferred from WPP participation pending evaluation of a deferral from WPP participation on the basis of medical issues (see Exhibits 6-9).
3. On 9/23/11, DHS denied Claimant's request for medical deferral from WPP.
4. On an unspecified date, DHS informed Claimant of an obligation to attend WPP beginning 10/17/11.

5. Claimant attended WPP on 10/17/11.
6. Claimant stopped attending WPP after 10/17/11.
7. On 11/4/11, DHS mailed Claimant a Notice of Noncompliance informing Claimant of an 11/10/11 triage date to discuss whether Claimant was noncompliant with WPP participation.
8. On 11/14/11, Claimant attended the triage and claimed that she had medical issues which prevented her from complying with WPP participation requirements.
9. On 11/14/11, Claimant was given various medical forms to be considered in another medical deferral from WPP participation.
10. On 12/9/11, DHS initiated termination of Claimant's FIP benefit eligibility effective 1/2012 on the basis that Claimant was noncompliant with WPP participation.
11. On 12/14/11, Claimant requested a hearing to dispute the FIP benefit termination.
12. On 12/14/11, Claimant submitted medical documents (Exhibits 14-21) to DHS concerning a basis for deferral.
13. On 1/6/12, Claimant submitted additional medical documents (Exhibits 10-13) to DHS.

### **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.

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 233A at 1. The DHS focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. *Id.* However, there are consequences for a client who refuses to participate, without good cause. *Id.*

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*

Depending on the case situation, penalties include the following: delay in eligibility at application, ineligibility (denial or termination of FIP with no minimum penalty period), case closure for a minimum period depending on the number of previous non-compliance penalties. *Id.*

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:

- Appear and participate with the work participation program or other employment service provider.
- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a FSSP.
- Comply with activities assigned on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in required activity.
- Accept a job referral.
- Complete a job application.
- Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/ or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.

In the present case, DHS alleged that Claimant was noncompliant with WPP participation requirements by failing to attend WPP after one day of attendance. Claimant conceded that she stopped attending WPP after 10/17/11. Claimant's absence from WPP lasted until 11/4/11, the date that DHS found Claimant's absences were sufficient to establish noncompliance with WPP participation. Based on the presented evidence, it is found that an absence from 10/18/11-11/4/11 that occurred after only one day of WPP attendance is a sufficient basis to establish noncompliance with WPP requirements.

WEIs will not be terminated from a WPP program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.* at 7. In processing a FIP closure, DHS is required to send the client a notice of non-compliance (DHS-2444) which must include: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration *Id.* at 8. In addition, a triage must be held within the negative action period. *Id.* If good cause is asserted, a decision concerning good cause is made during the triage and prior to the negative action effective date. *Id.*

It was not disputed that Claimant attended a triage appointment on 11/14/11. Claimant did not bring any medical documents to the triage but was given new medical documents by DHS so they may be evaluated in the good cause determination.

It was not disputed that Claimant submitted various medical documents alleging that her medical conditions worsened since she was last considered for WPP deferral. On 12/14/11, Claimant submitted a Medical Social Questionnaire (Exhibits 14-16) and Activities of Daily Living (Exhibits 17-21). On 1/6/12, Claimant submitted a Medical Needs- JET form (Exhibits 10-11) and a Medical Examination Report (Exhibits 12-13). It should be noted that the forms submitted on 1/6/12 required completion by a physician. The forms submitted to DHS on 12/14/11 only needed to be completed by Claimant. Claimant also provided a document (Exhibit 22) at the hearing that was not previously submitted.

It is known that DHS initiated termination of Claimant's FIP benefit eligibility on 12/9/11. Thus, at the time of the case action, Claimant had not provided any additional medical forms. However, Claimant submitted some forms on 12/14/11, prior to the effective date of the negative action. Claimant also submitted additional documents on 1/6/12 from her physician shortly after the negative action became effective. Claimant's 12/14/11 submissions could have been considered by DHS prior to the case closure. The 1/6/12 submissions and the document brought to the hearing could not have been considered by DHS prior to the negative action. However, due to the general difficulty in obtaining documents from a physician, clients should generally be given leeway in the submission of such documents. Thus, all medical documents submitted by the time of the administrative hearing will be considered in determining good cause.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. *Id* at 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id* at 4. A claim of good cause must be verified. *Id* at 3.

Documents (Exhibits 3-9) stemming from a previous deferral to WPP were presented. A Medical Needs- JET form (Exhibits 6-7) dated [REDACTED] was submitted. The treating physician noted Claimant could not work at any job for an indefinite period of time. In support of the conclusion, diagnoses of carpal-tunnel syndrome (CTS) and severe migraines were provided. Claimant was limited to lifting weights occasionally.

A Medical Examination Report (Exhibits 8-9) dated [REDACTED] 1 was presented. The treating physician noted diagnoses of CTS, seizures and fatigue. Claimant's condition was noted as stable. The physician noted there was evidence of a neurological disorder and that Claimant complained of migraine headaches.

On 9/22/11 DHS evaluated Claimant's submitted documents and found that Claimant could attend WPP subject to lifting restrictions (see Exhibit 3). DHS found no mental restrictions in Claimant's WPP attendance.

A Medical Social Questionnaire (Exhibits 14-16) dated [REDACTED] was presented. The form is intended to be completed by clients for general information about their claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant noted a work history involving only part-time employment. Claimant noted three hospital encounters from each month from 10/2011-12/2011. None of the encounters resulted in hospital admission. A hospital admission from 8/2011 for a sleep test was noted. Claimant noted taking the following prescriptions: Naproxen (for pain), Depakote to treat seizures, Imatrex for migraines and an illegible fourth prescription which treats CTS.

Claimant completed an Activities of Daily Living (Exhibits 16-20) dated 4/10/11; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted back pain and leg pain which cause her trouble in sleeping. Claimant noted that she is sleepy all of the time. Claimant noted she is sometimes so sick she cannot get out of bed or lift her head up. Claimant noted her friends and family, including her four children, do a lot of the cleaning for her. Claimant noted she needs help shopping due to CTS. Claimant reported she must be driven to the store because she suffers from seizures. Claimant noted she does not read because it makes her eyes and head hurt. Claimant reported she has no hobbies, because she cannot concentrate. Claimant noted she does not go anywhere because she worries about people judging her.

A Medical Examination Report dated [REDACTED] from Claimant's treating physician was presented. Diagnoses of migraine headaches, fatigue and neuritis were provided. It was noted that Claimant had spasms in muscles. Fibromyalgia was referenced, though not noted as a diagnosis. Claimant's condition was considered stable.

Claimant essentially claimed that she is so physically incapacitated that she was unable to attend WPP beyond the first day. This is a relatively high burden to establish. When a client is denied a medical deferral from WPP participation, there is an expectation that a client would make reasonable efforts to try to attend WPP. In the present case, Claimant appeared to make no efforts to attend WPP following the first day.

There was ample support to find that Claimant had various medical problems which would limit her ability to participate with WPP. WPP can accommodate many medical restrictions. Claimant asks for a blanket excuse from WPP participation for her 10/2011 absences. Generally, Claimant provided support for her claim. Claimant reported multiple hospital visits. Claimant's physician verified multiple diagnoses which could theoretically justify a three week excuse from WPP participation. Claimant's headaches and seizures might justify a blanket excuse from WPP participation, but there was little evidence to support how often these problems occurred. There was evidence that Claimant took medication for these symptoms; thus, tending to establish their existence,

though not necessarily their frequency. Most notably Claimant's physician gave Claimant a blanket excuse for 10/2011 WPP attendance (see Exhibit 22).

It should be noted that there was reason to doubt whether Claimant should be given a blanket excuse of good cause for WPP absences. Claimant's testimony and reported daily activity claims could be construed to be exaggerated. For example, Claimant reported needing help in bathing, grooming, shopping, driving, cleaning, cooking and virtually every daily activity in which information was sought. On a Medical Examination Report dated [REDACTED] Claimant's physician did not note that Claimant needed any help in performing her daily activities. Generally, Claimant painted a picture of health approaching total debilitation and incapacity. The medical records supported a finding of something much less severe.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6<sup>th</sup> Cir. 2007); *Bowen v Commissioner*. There is evidence to discount Claimant's testimony, but less evidence to discount the opinions of a treating physician. Deference will be given to the treating source opinion concerning Claimant's capability to attend WPP in 10/2011. Based on the presented evidence, Claimant submitted sufficient medical evidence to establish good cause for failing to attend WPP. It was not disputed that the FIP benefit termination was based solely on alleged noncompliance related to WPP absences. Accordingly, the FIP benefit termination is found to be improper.

It should be noted that this administrative decision speaks only to whether Claimant had good cause for failing to attend WPP in 10/2011. This decision makes no findings concerning Claimant's abilities to attend WPP in the future.

### **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 in terminating Claimant's FIP benefit eligibility effective 1/2012.

Accordingly, the Department's  AMP  FIP  FAP  MA  SDA  CDC decision is  AFFIRMED  REVERSED for the reasons stated on the record.

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

- (1) reinstate Claimant's FIP benefits beginning 1/2012;
- (2) process Claimant's ongoing FIP benefit eligibility subject to the finding that Claimant should have been deferred from WPP participation in 10/2011 due to medical reasons;
- (3) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance; and

- (4) remove any disqualification from Claimant's disqualification history as a result of the improper finding of noncompliance.

The actions taken by DHS are REVERSED.



Christian Gardocki  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: March 9, 2012

Date Mailed: March 9, 2012

**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 to:

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

CG/hw

cc:

