

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201256288
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: July 5, 2012
County: Wayne DHS (57)

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 July 5, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager, and [REDACTED], Work Participation Program (WPP) representative.

ISSUE

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) benefit eligibility due to Claimant's alleged noncompliance with 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 had a 20 hour/week WPP obligation.
3. Claimant attended WPP orientation on 3/19/12.
4. Claimant attended her assigned WPP for ten hours during her first week.
5. Claimant was a no-call/no-show on three of the five days during her first week of WPP attendance.

6. On an unspecified date, DHS determined that Claimant was noncompliant with WPP participation due to a failure to meet the 20 hour obligation during her first week.
7. On 4/25/12, DHS mailed a Notice of Noncompliance to Claimant scheduling Claimant for a triage to be held on 5/4/12.
8. Claimant failed to attend the triage and DHS determined that Claimant lacked good cause for her WPP absences.
9. On 5/7/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 6/2012 due to alleged noncompliance with WPP participation.
10. On 5/29/12, Claimant requested a hearing to dispute the FIP benefit termination.

CONCLUSIONS OF LAW

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

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.*

Participation with WPP (aka JET or Work First) is an example of an employment related activity. A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fail, 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.

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.

In addition to good cause, DHS regulations also consider a client's excused absences. In a DHS policy section captioned "Excused Absences", it is noted that a client's participation in an unpaid work activity may be interrupted by occasional illness or unavoidable event. BEM 230A at 18. A WEI's absence may be excused up to 16 hours in a month but no more than 80 hours in a 12-month period. *Id*.

DHS has completely separate policy sections between excused absences and good cause. Excused absences impact whether absences amount to noncompliance; good cause considers whether there is an excuse for apparent noncompliance. A claim of good cause must be verified. *Id* at 3; there is no explicit requirement for a client to verify an excused absence. Excused absences are capped; absences from good cause are uncapped. These differences support finding that excused absences are a factor in determining whether a client was WPP noncompliant.

The testifying WPP representative contended that clients must verify any absence from WPP. DHS regulations do not support this requirement. The WPP can require verification of an excused absence from a client but the requirement is not enforceable

at an administrative hearing if DHS regulations contradict the requirement. Again, DHS regulations do not require a client to verify a reason for an excused absence.

In the present case, it was not disputed that Claimant failed to complete 10 hours over three days of WPP during the week of 3/18/2012-3/24/12. There was no further noncompliance because Claimant reported back to WPP on 3/26/12 and was told to not return due to the previous week's absences. Claimant testified that she missed two days because of a domestic violence issue and a third day due to a medical appointment for her daughter; none of Claimant's testimony was verified. The WPP also noted that Claimant's absences were no-call/no-show.

Being a no-call/no-show for 3 of 5 days during the first week of work would get most people fired from a job. If noncompliance is evaluated based on a comparison to an employer-employee relationship, it would likely be found that Claimant was noncompliant.

Despite Claimant's poor attendance, the hourly absences were within the amount allowed by DHS' excused absence policy. Though Claimant's case would be bolstered by verification, DHS policy does not require it. It is found that Claimant's absences from WPP should have been considered excused absences. Accordingly, DHS failed to establish that Claimant was noncompliant with WPP participation.

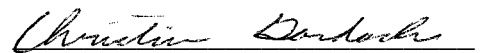
It was not disputed that the 6/2012 FIP benefit termination was based on alleged WPP noncompliance by Claimant. As DHS failed to establish that Claimant was noncompliant with WPP, it is found that DHS improperly terminated Claimant's FIP benefit eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefit eligibility effective 6/2012. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefit eligibility effective 6/2012 subject to the finding that Claimant was complaint with WPP participation;
- (2) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance;
- (3) 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: July 11, 2012

Date Mailed: July 11, 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:

