

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201257714
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: July 18, 2012
County: Wayne DHS (76)

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 18, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist, [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 and whether DHS imposed the proper penalty.

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 an ongoing WPP participant.
3. Claimant had a 20 hour/week WPP attendance obligation.
4. Claimant attended WPP for the following hours for the following weeks: 20 hours for the week ending 4/7/12, 6 hours for the week ending 4/14/12 and 0 hours for the week ending 4/21/12.

5. On 5/15/12, DHS mailed a Notice of Noncompliance (Exhibit 2) to Claimant informing Claimant of a triage meeting to be held on 5/22/12.
6. Claimant failed to attend the scheduled triage.
7. DHS determined that Claimant was noncompliant with WPP participation due to absences from WPP.
8. On 5/14/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 7/2012 due to Claimant's noncompliance with WPP participation.
9. DHS considered Claimant's disqualification to be the second incident of noncompliance.
10. On 5/24/12, Claimant requested a hearing to dispute the FIP benefit termination and to dispute that it was her second incident of noncompliance.

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 failing or refusing to so 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.

It should be noted that DHS regulations do not objectively define a failure to appear or participate with WPP. Thus, it is left to interpretation how many hours of WPP absence equates to a failure to participate.

It was not disputed that Claimant had a 20 hour/week WPP obligation. It was not disputed that Claimant only attended WPP for 6 hours for the week ending 4/14/12 and 0 hours the following week. Claimant's 34 hour absence within a two week period was sufficient to establish noncompliance based on Claimant's WPP absences.

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.

Work participation program participants will not be terminated from the work participation 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*.

DHS stated that a triage was held on 5/22/12 and that Claimant did not attend. DHS found that Claimant lacked good cause. Despite Claimant's triage absence, Claimant's assertion of good cause will be considered.

Claimant contended that she failed to attend WPP after 4/11/12 because of mandatory appointments with Child Protective Services (CPS). Claimant stated that she met with CPS two times in 4/2012. Claimant failed to clarify why she would need to miss WPP for 34 hours over a two week period from two meetings with a CPS worker. For good measure, DHS provided an email (Exhibit 1) from Claimant's CPS worker. The email verified that the CPS worker did not require Claimant to be absent for any days from WPP. It is found that Claimant had no good cause for her failure to attend WPP.

It was not disputed that Claimant's noncompliance with WPP participation was the basis for the FIP benefit termination. As it was established that Claimant was noncompliant with WPP participation, it is found that DHS properly terminated Claimant's FIP benefit eligibility.

Claimant raised an issue over whether it was her second or first disqualification from WPP. DHS contended that this was Claimant's second penalty. The number of previous disqualifications matters because it determines the penalty for the current disqualification. DHS is to close a case for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A at 1.

DHS alleged that a previous disqualification occurred in 9/2009. DHS had no record of a Notice of Case Action regarding the disqualification. DHS stated that Bridges, the DHS database, had a record of a Notice of First Noncompliance from that time period. The Notice of First Noncompliance form is a document given to clients to allow them to admit noncompliance in lieu of having a three month sanction. The client must sign the document to admit noncompliance. DHS was unable to present a signed copy to verify a previous noncompliance by Claimant. Based on the presented evidence, DHS failed to verify that Claimant had notice of a previous WPP disqualification. Accordingly, Claimant's noncompliance stemming from her 4/2012 WPP absences shall be considered Claimant's first noncompliance.

DECISION AND ORDER

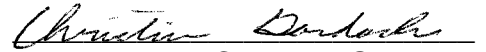
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly found Claimant to be noncompliant with WPP participation. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish that the current WPP disqualification was Claimant's second disqualification. It is ordered that DHS:

(1) remove any disqualification previous to 7/2012 from Claimant's disqualification history;

(2) disqualify Claimant for no more than a three month period beginning 7/2012.

The actions taken by DHS are PARTIALLY REVERSED.


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

Date Signed: July 20, 2012

Date Mailed: July 20, 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:

