

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

IN THE MATTER OF:



Reg. No.: 201264588
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: September 5, 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 September 5, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager, [REDACTED], JET Coordinator, 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 due to an alleged long-term disability related to: sleep apnea, heart problems, depression and obesity.
3. On 5/16/12, the Medical Review Team (MRT) denied Claimant's continuing deferral from WPP and determined that Claimant was work-ready with no limitations.
4. On 5/25/12, DHS mailed Claimant a notice to attend a scheduled WPP orientation for 6/11/12 (see Exhibit 1).

5. Claimant failed to attend the orientation and failed to attend any subsequent dates with WPP.
6. On 6/25/12, DHS mailed Claimant a Notice of Noncompliance informing Claimant of a triage to be held on 7/5/12.
7. Following the triage, DHS determined that Claimant had no good cause for failing to attend WPP.
8. On 7/11/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 8/2012 due to noncompliance by Claimant with WPP attendance.
9. On 7/17/12, Claimant requested a hearing to dispute the termination of FIP benefit eligibility.

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 (5/2012), p. 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 (see *Id.*, pp. 1-2):

- 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.

DHS contended that Claimant was noncompliant with WPP participation requirements by failing to attend an orientation and to subsequently begin regular WPP attendance. It was not disputed that Claimant failed to attend WPP. Based on the above list of reasons for noncompliance, DHS established a basis for noncompliance with WPP participation.

Claimant was asked why she failed to attend the WPP orientation scheduled for 6/11/12. Claimant repeatedly stated that she was found to be disabled by three different physicians. Claimant's testimony implied that she has a long-term disability which prevents her WPP participation.

It was not disputed that Claimant has not been found disabled by the Social Security Administration despite claiming to be disabled since 2007. Claimant stated that she previously exhausted her SSA appeals and is currently awaiting an administrative hearing stemming from a second application.

When an individual claims to be disabled or indicates an inability to participate in work or the work participation program for more than 90 days because of a mental or physical condition, the client should be deferred in Bridges. BEM 230A (12/2011), p. 10. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. *Id.* For verified disabilities over 90 days, the specialist must obtain a Medical Review Team (MRT) decision by completing the medical packet. *Id.*

In the present case, an MRT decision finding Claimant to be work-ready was made. A subsequent administrative decision ordered MRT to reevaluate the decision due to the

failure to consider Claimant's claims of headaches and sleep apnea. An MRT decision dated 5/16/12 found Claimant work-ready with no limitations. DHS met their procedural requirements for evaluating Claimant's alleged long-term disability. The MRT decision does not preclude a finding of good cause for a failure to participate with WPP.

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. BEM 233A (5/2012), p 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.

JET participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id* p. 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* p. 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*.

The issue of whether Claimant had good cause for failing to attend WPP should not require an evaluation of Claimant's medical history, unless it is germane to the reason that Claimant failed to attend WPP. Claimant asserted a claim of disability based on heart problems, obesity, sleep apnea and depression. The diagnoses are such that they may result in work restrictions that range from mildly inconveniencing to completely debilitating. Thus, the diagnoses, by themselves, provide little insight into whether Claimant is capable of participating with WPP. Claimant failed to address how these conditions prevented her WPP participation on 6/11/12 and thereafter. Symptoms that could justify a finding of good cause or establish a basis for WPP deferral would include, but are not limited to: extreme fatigue, sitting and/or standing restrictions or marked social restrictions. Claimant alleged no such symptoms and failed to submit any medical evidence of any such symptoms.

A key point in the hearing began with Claimant stating that she called DHS to report that she could not attend WPP on 6/11/12 and that she failed to receive a return phone call. When Claimant was asked why she couldn't attend, Claimant stated that "Something had come up. I have a son with disabilities who has had 17 surgeries." Claimant then went on to say that her son's panhypopituitarism caused her to miss because she and her son went to the hospital on the day she was to attend orientation. When Claimant was asked about verifying the hospital trip with documentation, Claimant then stated something happened with her son on the day of orientation but that she was unsure what. Claimant then went on to cite a surgery form 3/2012 where her son spent three nights in intensive care. Claimant refused to clarify how a 3/2012 hospitalization for her son was related to her absence from WPP in 6/2012.

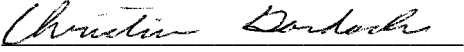
Claimant then stated that different physicians told her that she cannot work. Following some questions attempting to determine whether Claimant's basis for failing to attend WPP was because of Claimant's problems or her son's problems, Claimant attempted to clarify matters by stating, "This has nothing to do with my son. You asked me why I missed my last orientation and I told you something had happened with my son- period." When again asked why she missed orientation, Claimant stated that she was "done" and left the hearing room.

It is worth noting that WPP is required to make reasonable accommodations for client restrictions. In the present case, Claimant failed to establish having any such restrictions, either psychological, physical or by being a caretaker to a disabled child. Claimant's contradictory testimony, lack of evidence and defensive reactions raised more doubts concerning her credibility than the correctness of the DHS actions. Based on the presented evidence, it is found that DHS properly determined that Claimant had no good cause for failing to attend WPP and that a finding of noncompliance was proper.

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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefit eligibility effective 8/2012 based on Claimant's noncompliance with WPP participation. The actions taken by DHS are AFFIRMED.


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

Date Signed: September 12, 2012

Date Mailed: September 12, 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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

