

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201266711
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: September 27, 2012
County: Wayne DHS (35)

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 27, 2012 from Detroit, Michigan. Participants included the above named claimant; Devin McKay testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist, 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 was a FIP benefit group member along with her child and child's father.
3. Claimant's child's father was an ongoing WPP participant.
4. Claimant's child's father stopped attending WPP in 5/2012.

5. On 6/19/12, DHS mailed Claimant's child's father a Notice of Noncompliance informing him of a triage meeting to be held on 6/26/12.
6. Claimant's children's father failed to attend the triage appointment.
7. On 6/26/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 8/2012.
8. On 7/23/12, 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.

DHS contended that Claimant's child's father was noncompliant with WPP participation requirements by ceasing WPP attendance as of 5/7/12. Claimant's children's father estimated that he continued to participate in WPP for at least the following two weeks. Neither side presented direct evidence of Claimant's WPP attendance. The WPP representative was deemed to be credible, in part, because of the notable efforts that she made in the present case.

It was not disputed that Claimant's child's father had some criminal justice issues which impacted his WPP attendance. Instead of suggesting continuing attendance at WPP, the WPP representative suggested a program for Claimant's child's father that would have shown the consequences of criminal activity in an effort to keep him from continued criminal activity. It was not disputed that Claimant's children's father declined to participate in the program. Claimant's children father's unwillingness participate in the criminal activity program makes it more likely he was unwilling to participate in WPP.

It was also not disputed that the WPP representative assisted Claimant with a medical deferral from WPP participation around the same time that her children's father stopped attending WPP. Testimony was also given that Claimant's children's father was re-engaged with WPP by the WPP representative after a period when he stopped attending.

Claimant's children's father stated that he stopped WPP attendance because he was essentially told by the WPP representative that he would no longer be a part of Claimant's benefit case. The WPP representative denied making such a statement. She also noted that she would have no ability to remove Claimant's children's father from Claimant's case; that would be a function left for a DHS specialist.

It would be unlikely that a WPP representative would put forth such competent effort in assisting Claimant and her children's father, yet find noncompliance during a period when Claimant's children's father was attending WPP. It would be equally unlikely that the WPP representative would have advised a WPP participant to stop attending the program.

It did not help Claimant's children's father's credibility that his last explanation for the stopped attendance was that he was told by a WPP representative to stop attending, rather than mentioning that as his first excuse. Claimant's children's father mentioned a school obligation and a criminal justice obligation prior to contending that he was told by a WPP representative to stop attending. Based on the presented evidence, it is found that DHS established a basis for noncompliance in WPP participation by Claimant's children's father.

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*, p. 4. A claim of good cause must be verified. *Id*, p. 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*.

DHS stated that a triage was held on 6/26/12 and that Claimant failed to attend the triage. Claimant stated that she did not attend the triage because the notice sent by DHS was not received. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976) DHS is known to mail documents through their computer system thereby reducing the element of human error. The mailing address on the WPP orientation notice matched Claimant's mailing address provided at the hearing. Claimant conceded that her address has not changed. DHS established a presumption that Claimant received the orientation notice. No persuasive evidence was presented to rebut the presumption.

Based on the presented evidence, it is found that DHS established that the correspondence concerning WPP orientation was properly mailed to Claimant. Accordingly, the triage was properly held in Claimant's absence. There was no evidence of good cause for Claimant's children's father absence from WPP. It is found that Claimant's children's father was noncompliant with WPP participation. Accordingly, the FIP benefit termination based on the finding of noncompliance was proper.

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 her children's father'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: 10/5/2012

Date Mailed: 10/5/2012

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:

