

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

IN THE MATTER OF:



Reg. No.: 201266722
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: September 27, 2012
County: Oakland DHS (03)

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; [REDACTED] testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Supervisor.

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 not an ongoing WPP participant due to a deferral based on a long-term disability.
3. On an unspecified date, the Medical Review Team (MRT) determined that Claimant was capable of attending WPP.
4. Claimant was scheduled to attend a WPP orientation on 6/12/12.

5. Claimant attended the orientation but stopped WPP attendance after 6/12/12.
6. On 7/24/12, a triage was held and DHS determined that Claimant lacked good cause for her failure to attend WPP.
7. On 7/13/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 8/2012.
8. On 7/20/12, 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 (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 (*Id.*, p. 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.

It was not disputed that Claimant attended a WPP orientation on 6/22/12, but failed to attend WPP for any dates thereafter. The stoppage in attendance following a single date of attendance is sufficient to establish a basis for noncompliance.

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 233 A (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 childcare, 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*.

Claimant stated that she would be unable to attend because she was required to drop off her child at school during a time she would be expected to attend WPP. Claimant elaborated that the WPP would not allow late attendance. Claimant's testimony that WPP would not allow late attendance seemed to be based on speculation rather than a known WPP policy. Claimant made no efforts to attend WPP after the orientation so she cannot state with any certainty that she would be turned away if she attended WPP after her start time. Claimant's testimony concerning this issue was not particularly compelling.

Claimant testified that she had difficulties with transportation that affected her abilities to attend WPP. Claimant stated she had no money and no access to a vehicle. Again

Claimant's testimony was not particularly compelling. Claimant had access to a vehicle for purposes of dropping off her child but failed to explain why she would not have access to attend WPP. More importantly, there was no evidence that public transportation was not a viable option.

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 at 10. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. *Id.*

Claimant also alleged that she was physically unable to attend WPP. Once a client claims a disability he/she must provide DHS with verification of the disability when requested. *Id.* The verification must indicate that the disability will last longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.* The client will be required to fully participate in the work participation program as a mandatory participant. *Id.* For verified disabilities over 90 days, the specialist must obtain an MRT decision by completing the medical packet. *Id.* The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. *Id.*

Claimant presented a Medical Needs Form (Exhibit 1) completed by her physician which noted that Claimant would be unable to work at her previous employment or any other job for a period of six months. The form was signed by Claimant's physician on 5/4/12. Claimant also presented other documents to DHS including a physician statement limiting Claimant to the following: 10 minutes of standing, 20 minutes of sitting and lifting one gallon of milk (approximately 8.3 pounds). Claimant and her mother also gave additional testimony that Claimant slept for extended periods during the day. Listed diagnosis for Claimant included hypothyroidism and hepatitis. Claimant stated that she also suffered from stenosis, and scoliosis.

It is worth noting that WPP attendance is a low impact obligation which is expected to reasonably accommodate physical restrictions of clients. The requirement to accommodate restrictions distinguishes the obligation from many types of employment which have no such accommodation requirements. However, when a client's restrictions reach a certain level, WPP attendance cannot be reasonably expected.

In the present case, the most compelling evidence came from Claimant's physician who deferred Claimant from employment for a six month period. 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 (6th Cir. 2007); *Bowen v. Commissioner*. The six month deferral from WPP stated by Claimant's treating physician was sufficiently supported by medical evidence and deserves deference. Accordingly, it is found that Claimant established good cause for being physically unfit to attend WPP.

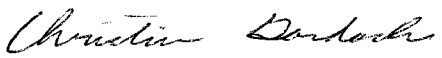
It was not disputed that the DHS termination of Claimant's FIP benefit eligibility was based on a finding of noncompliance with WPP attendance. As Claimant established good cause for her WPP absences, the FIP benefit termination is deemed to be improper.

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. It is ordered that DHS:

- (1) redetermine Claimant's FIP benefit eligibility effective 8/2012, subject to the finding that Claimant established good cause for WPP absences;
- (2) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance;
- (3) remove any disqualification from Claimant's 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: 10/9/2012

Date Mailed: 10/9/2012

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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:



MAHS