

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

IN THE MATTER OF:



Reg. No.: 201267025
Issue No.: 3029
Case No.: [REDACTED]
Hearing Date: October 8, 2012
County: Wayne DHS (19)

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 October 8, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager, and [REDACTED], Specialist.

ISSUES

The issue is whether DHS properly reduced Claimant's Food Assistance Program (FAP) benefit eligibility 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 FAP benefit recipient.
2. Claimant was an ongoing WPP participant.
3. On 6/5/12, DHS initiated a reduction of Claimant's FAP benefit eligibility effective 7/2012 due to WPP noncompliance.
4. On 7/30/12, Claimant requested a hearing to dispute the FIP benefit termination.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Claimant requested a hearing to dispute a FAP benefit case action taken by DHS on 6/5/12. It was not disputed that the DHS case action resulted in a reduction of Claimant's FAP benefit eligibility. It was also not disputed that the FAP benefit reduction was solely based on an employment-related disqualification resulting in a reduction of group members. The employment-related disqualification was based on Claimant's alleged failure to participate with WPP.

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:

- 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.

The above cited DHS policies were written to address a client's FIP benefit work requirements but FAP penalties may also be applicable. Noncompliance with employment requirements for FIP/RAPC may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B (12/2011), p. 1. Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may apply if the client is active FIP and FAP and becomes noncompliant with a cash program requirement without good cause. *Id.* The present case concerns this very scenario. Thus, there is a basis for a FAP penalty if Claimant is found to have been noncompliant with WPP. The pivotal issue is then whether Claimant was noncompliant with her WPP obligations.

DHS contended that Client conceded noncompliance in her testimony and that Claimant's only concern was whether the penalty had ended. Claimant testified that she understands that "I went to work first and they had gave me a six month penalty and my penalty has been lifted and I'm still receiving a decrease in my stamps and it's only for a family of two and I have a household family of three." Reading the testimony literally, it could be interpreted as conceding a 6 month FAP benefit sanction. Such an interpretation makes sense if Claimant requested a hearing six months (or close to it) after the sanction was imposed. Such an interpretation makes less sense when Claimant requested a hearing in the same month that the FAP benefit sanction was imposed unless Claimant was a very bad number counter.

DHS may have also inferred a concession based on Claimant's hearing request. Noncompliance issues typically involve FIP benefit disputes. The present case is unusual in that Claimant's hearing request only disputed FAP benefit eligibility. A client failing to dispute a FIP benefit termination based on noncompliance is not a concession of noncompliance. It can only be inferred that Claimant does not dispute the FIP benefit termination. Disputing the underlying reason for the FIP benefit termination as it related to FAP benefit eligibility is consistent with not disputing the FIP benefit termination.

It was presumed that Claimant objected to the FAP benefit reduction and the underlying sanction. It was presumed that Claimant did not object to a FIP benefit termination because she either had employment income to offset the loss of FIP benefits and/or she no longer wanted the hassle of a WPP obligation. Perhaps more questioning could have been made of Claimant concerning the reason for her hearing request. However, based

on the presented evidence, it is found that Claimant intended to dispute the underlying noncompliance related to the FAP benefit sanction.

DHS alleged that Claimant was noncompliant with WPP by failing to attend two appointments, one on 2/27/12 and one on 2/28/12. As noted above, missing a single appointment could be a basis for noncompliance.

DHS stated that the appointments were with Claimant's case manager at WPP. DHS was unable to explain the purposes for the appointments. DHS was unable to explain why the missed dates were framed as missed appointments rather than generic absences from WPP. The distinction matters because DHS regulations give leeway in excused absences.

A client's participation in an unpaid work activity may be interrupted by occasional illness or unavoidable event. BEM 230A (12/2011), p. 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.*

Claimant stated that she should have been excused from attending the appointments because she worked on both dates. Claimant failed to verify her excuse. Nevertheless, verification is not required for excused absences (as opposed to good cause).

Based on the presented evidence, DHS did not meet their burden in establishing noncompliance by Claimant. It was not disputed that the 6/2012 FAP benefit reduction was based on Claimant's noncompliance with an employment-related activity. Based on the finding that DHS failed to establish noncompliance by Claimant in WPP participation, the reduction of FAP benefits is found to be improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the reduction of FAP benefits was improper. It is ordered that DHS:

- (1) redetermine Claimant's FAP benefit eligibility, effective 6/2012, subject to the finding that Claimant was not noncompliant 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 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: 10/17/2012

Date Mailed: 10/17/2012

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:

