

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

IN THE MATTER OF:



Reg. No.: 201245845
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: July 2, 2012
County: Oakland DHS (02)

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 2, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [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.

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.
3. On 2/2/12, DHS mailed Claimant a Work Participation Program Appointment Notice (Exhibit 1) informing her of an obligation to attend a WPP orientation on 2/14/12.
4. Claimant did not attend the 2/14/12 scheduled orientation.

5. On 3/1/12, DHS mailed Claimant a Work Participation Program Appointment Notice (Exhibit 2) informing her of an obligation to attend a WPP orientation on 3/13/12.
6. Claimant attended the orientation scheduled for 3/13/12.
7. On an unspecified date, DHS mailed a Notice of Noncompliance to Claimant informing Claimant of a triage meeting to be held on 3/12/12.
8. Claimant failed to attend the 3/12/12 triage.
9. On 3/13/12, DHS initiated termination of Claimant's FIP benefit eligibility, effective 4/2012 due to Claimant's failure to attend WPP orientation on 2/14/12.
10. On 4/9/12, 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.

It was not disputed that DHS mailed Claimant a notice to commence WPP attendance beginning 2/14/12. It was also not disputed that Claimant failed to attend the scheduled WPP orientation. Based on the above list of reasons for noncompliance, missing a single date of WPP attendance could be construed as WPP noncompliance by not appearing and participating with WPP or as a failure to appear for a scheduled appointment. For purposes of this decision, it will be found that the single missed date of orientation was an appropriate basis to find that Claimant was noncompliant with WPP participation.

DHS contended that Claimant was already WPP noncompliant by missing the first scheduled WPP orientation on 2/14/12. DHS also contended that Claimant could not become compliant after already being noncompliant. If DHS truly considered Claimant to be noncompliant after missing the orientation scheduled for 2/14/12, then no further orientation forms should have been mailed to Claimant and no further chances should have been given. The DHS evidence concerning noncompliance was contradictory. Generally, contradictory evidence will be construed in the most favorable way for the opposing party. It is found that the DHS mailing of a second orientation form and subsequent attendance by Claimant negated the earlier noncompliance by Claimant. It is found that Claimant was not noncompliant for failing to attend a WPP orientation by virtue of her attendance at WPP orientation on 3/13/12.

WEIs will not be terminated from a WPP 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*.

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.

DHS contended that even if Claimant's missed orientation is ignored, Claimant became WPP noncompliant after ceasing WPP attendance on 3/16/12. The DHS contention has several problems.

First, it was not disputed that DHS never held a triage concerning that specific allegation of compliance. The fact that DHS held a triage for a different allegation of noncompliance is irrelevant. It is not plausible to hold a triage on 3/12/12 to discuss Claimant's attendance issues which began after 3/16/12. It is found that DHS failed to hold a triage concerning Claimant's alleged WPP noncompliance starting 3/17/12.

For good measure, Claimant also raised two issues concerning good cause. Claimant stated she had a medical excuse for not attending WPP; this issue was debatable. Claimant also stated that she was told to stop WPP attendance because DHS had already initiated termination of her FIP benefit eligibility. Claimant's testimony concerning this issue was credible and supported by the verified dates involved in terminating the FIP benefits. It is found that Claimant was not noncompliant with WPP participation on 3/16/12 because she was told to cease WPP attendance after DHS terminated her FIP benefit eligibility.

It was not disputed that the 4/2012 FIP benefit termination was based on the DHS finding that Claimant was noncompliant with WPP participation. Based on the finding that Claimant was compliant with WPP orientation, the DHS termination of FIP benefits is found to be improper.

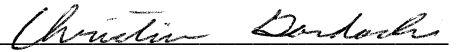
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefit eligibility effective 4/2012. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefit eligibility, effective 4/2012, subject to the finding that Claimant was compliant with WPP participation;

- (2) supplement Claimant for any benefits lost as a result of the determination that Claimant was WPP noncompliant; and
- (3) remove any disqualification from Claimant's disqualification history as a result of the determination of noncompliance.

The actions taken by DHS are REVERSED.


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

Date Signed: July 9, 2012

Date Mailed: July 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

