

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

IN THE MATTER OF:



Reg. No.: 201254326
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: June 21, 2012
County: Wayne DHS (76)

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 June 21, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) benefit eligibility and reduced Claimant's Food Assistance Program (FAP) 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 1/20/12, DHS mailed Claimant a Work Participation Program Appointment Notice (Exhibit 2) informing Claimant of an obligation to attend a WPP orientation on 2/27/12.

4. On 3/6/12, DHS mailed Claimant a Work Participation Program Appointment Notice (Exhibit 3) informing Claimant of an obligation to attend a WPP orientation on 3/19/12.
5. Claimant failed to timely attend either scheduled orientation.
6. On 5/2/12, DHS mailed a Notice of Noncompliance (Exhibit 5) to Claimant informing Claimant of a triage meeting to be held on 5/2/12.
7. Claimant failed to attend the scheduled triage.
8. DHS subsequently determined that Claimant was noncompliant with WPP participation due to Claimant's failures to attend WPP orientation.
9. On 5/14/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 6/2012 due to Claimant's alleged noncompliance with WPP participation.
10. On 5/25/12, 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 the alleged basis of noncompliance involved Claimant's alleged failure to attend two scheduled WPP orientations. 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.

Claimant testified that she did not recall receiving a notice dated 1/20/12 to attend a WPP orientation. Claimant acknowledged receiving a second notice dated 3/6/12 to attend a WPP orientation scheduled on 3/19/12. Claimant testified that she went to WPP at the scheduled date and time but was not allowed entry because she was 10 minutes late; Claimant's testimony was neither verified nor refuted.

Claimant noted that she was only 10 minute tardy in her written Request for a Hearing. Generally, testimony is more credible when it is also noted in a Request for Hearing. This is supportive of finding that Claimant's testimony was credible.

A basis for noncompliance is very comparable to grounds for an employment termination. Traditionally, ten minute tardiness, even on the first day of work, will not result in an employment termination. This tends to support that the alleged tardiness did not amount to noncompliance by Claimant.

Claimant failed to establish any argument for her failure to attend a previous scheduled orientation (see Exhibit 2) and a subsequent triage appointment (see Exhibit 5). Thus, at best, Claimant missed two appointments and was tardy for a third appointment. The undisputed Claimant failure to attend two appointments related to WPP raises doubts about whether Claimant bothered to attend a second orientation. Generally, if a client misses two appointments without explanation, it is more likely that the client never bothered to attend the third appointment.

Claimant made references to having transportation problems. She testified that she relies on public transportation (which is not always reliable). Transportation problems can amount to good cause for WPP 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. *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. For “no transportation”, DHS regulations allow good cause when the client requested transportation services from DHS, the work participation program, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. *Id.* at 4-5. There was no particular evidence that Claimant’s reliance on a bus for transportation justified her failure to attend two appointments and to be late for a third. It is found that a lack of transportation did not amount to good cause for the alleged noncompliance.

It was a close call, but the evidence was slightly more favorable in finding that noncompliance was not established. Claimant’s testimony was more credible than not concerning being turned away after a ten minute tardiness. Ten minute tardiness would not typically be grounds for an employment termination, even if the tardiness occurred on a first day. Comparably, it does not amount to WPP noncompliance.

It was not disputed that the FIP benefit termination was based solely on a finding of WPP noncompliance by DHS. As noncompliance was not established, the FIP benefit termination 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 6/2012. It is ordered that DHS:

- (1) reinstate Claimant’s FIP benefit eligibility effective 6/2012;
- (2) recalculate Claimant’s ongoing FIP benefit eligibility effective 6/2012, subject to the finding that Claimant was not noncompliant with WPP participation;
- (3) supplement Claimant for any benefits lost as a result of the improper benefit termination; and

(4) remove any relevant disqualification from Claimant's disqualification history.

The actions taken by DHS are REVERSED.



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

Date Signed: June 29, 2012

Date Mailed: June 29, 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:

