

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201263797
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: August 16, 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 August 16, 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], JET Coordinator.

ISSUE

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) and Child Development and Care (CDC) benefit eligibility due to Claimant's 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 and CDC benefit recipient.
2. Claimant was temporarily deferred from WPP participation while DHS evaluated Claimant for deferral based on a long-term disability.
3. DHS denied Claimant's WPP deferral based on long-term disability.
4. On 6/1/12, DHS mailed Claimant a Work Participation Program Appointment Notice (Exhibit 1) informing Claimant of an obligation to attend WPP on 6/12/12.

5. Claimant did not attend the 6/12/12 orientation.
6. On 6/16/12, DHS mailed a Notice of Noncompliance to Claimant informing her of a triage meeting to be held on 6/26/12.
7. Claimant attended the triage and stated that she did not receive the Work Participation Program Appointment Notice.
8. Claimant also advised DHS at the triage that if she had received the notice to attend orientation, she would have attended, though she would have brought medical documents so that she could be considered for deferral from further WPP attendance.
9. DHS determined that Claimant lacked good cause for her failure to attend WPP orientation.
10. On 6/26/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 8/2012 due to Claimant's alleged noncompliance with WPP participation.
11. On 6/26/12, DHS initiated termination of Claimant's CDC benefit eligibility effective 7/15/12 due to Claimant lacking a need for CDC benefits.
12. On 7/2/12/12, Claimant requested a hearing to dispute the FIP and CDC benefit terminations.

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 was noncompliant with WPP participation requirements by failing to attend an orientation and to subsequently begin regular WPP attendance. It was not disputed that Claimant failed to attend WPP. Based on the above list of reasons for noncompliance, DHS established a basis for noncompliance with WPP participation.

Claimant stated that she did not attend the scheduled orientation 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. However, as noted above, the presumption is rebuttable.

It was not disputed that Claimant attended a subsequent triage held due to Claimant's failure to attend the WPP orientation. It was also not disputed that Claimant told DHS at the triage that she did not receive the WPP orientation notice. Generally, clients that attend triages are making efforts in communicating and complying with WPP requirements and somewhat less likely to be purposely noncompliant. Also, testimony is more credible when it is consistent over time such as when a client makes identical arguments at a triage and at an administrative hearing. This evidence is somewhat supportive to rebutting the presumption of delivery of the WPP orientation notice.

Though DHS presented a reasonably persuasive case, Claimant provided sufficient testimony to rebut a presumption of mail delivery. It is found that Claimant failed to attend WPP orientation because she did not receive the WPP notice and that Claimant was therefore not noncompliant with WPP participation. As it was not disputed that Claimant's FIP benefit eligibility was terminated solely because of the DHS finding of noncompliance, it is found that the FIP benefit termination was improper.

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

It is known that DHS terminated Claimant's eligibility for CDC benefits effective 7/15/12. The CDC issue was not well developed at the administrative hearing. Presumably, DHS terminated Claimant's CDC eligibility because Claimant had no need for CDC benefits because Claimant did not attend WPP. Claimant gave testimony that she needed the CDC due to health related reasons which would make her eligible for CDC benefits whether she attended WPP or not. Though it is uncertain for which reason that Claimant received CDC benefits, it is known that Claimant will need the CDC benefits due to the need to resend Claimant to WPP. Thus, the CDC 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 and CDC benefit eligibility. It is ordered that DHS:

- (1) reinstate Claimant's FIP benefit eligibility effective 8/2012;
- (2) reinstate Claimant's CDC benefit eligibility effective 7/15/12;
- (3) process Claimant's ongoing FIP and CDC eligibility subject to the finding that Claimant was compliant with WPP participation;
- (4) supplement Claimant for any benefits lost as a result of the improper finding of noncompliance; and

(5) remove any disqualification from Claimant's disqualification 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: August 21, 2012

Date Mailed: August 21, 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:

