

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201314114
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: January 28, 2013
County: Wayne DHS (41)

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 January 28, 2013, 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 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 WPP participant.
2. On 8/11/12, DHS mailed Claimant a Work Participation Appointment Notice scheduling Claimant to attend WPP on 8/22/12.
3. Claimant failed to stay for WPP orientation or to continue any WPP participation.
4. On an unspecified date, DHS determined Claimant was noncompliant with an employment-related activity and imposed an employment-related disqualification.

5. On 9/4/12 DHS initiated termination of Claimant's FIP benefit eligibility, effective 10/2012, due to the disqualification imposed by DHS.
6. On 9/4/12, DHS mailed Claimant a Notice of Noncompliance notifying Claimant of a triage meeting to be held on 9/10/12.
7. On an unspecified date, DHS determined that Claimant had no good cause for the failure to attend WPP.
8. On 11/28/12, Claimant requested a hearing to dispute the termination of FIP benefits.

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, 8 USC 601, *et seq.* DHS administers the FIP pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. DHS policies are found 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.

The present case involves a FIP benefit termination, effective 10/2012, based on an employment disqualification against Claimant. DHS alleged that Claimant failed to attend WPP orientation on 8/22/12, or any dates thereafter. Claimant stated she attended her 8:30 a.m. appointment but did not stay because she had a job interview at 9:00 a.m. Claimant also testified that she did not return to WPP after her job interview because she started work on that day. Claimant also claimed she continued working until 10/2012. Based on Claimant's failure to participate with WPP but for a few minutes on 8/22/12, DHS imposed a basis to establish that Claimant was noncompliant. Claimant's excuse for the alleged noncompliance will be evaluated below, in terms of good cause.

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 233A (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 child care, 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.

Claimant alleged that she had good cause for not attending WPP because she was working. Claimant brought a Verification of Employment to the hearing which supposedly verifies that she worked from 8/22/12 through 9/2012. Claimant's claim of good cause is not without problems.

Good cause requires employment of 40 hours/week. The Verification of Employment was not accepted as an exhibit, but Claimant read some of her pay history hours into the record. Claimant's hours were consistently in the range of 20-30 hours,

Also, Claimant's Verification of Employment could not be verified with the employer. Claimant provided an address and a phone number for the alleged former employer but Claimant stated that the employer closed the business within the 3-4 months since the FIP benefit termination. Claimant's allegation was somewhat confirmed after an internet

search revealed a staffing company had the phone number provided by Claimant. It is possible that Claimant's employer is unverifiable.

It is also troublesome for Claimant that her DHS specialist had no knowledge of Claimant's employment or stopped employment. Claimant alleged that she made numerous calls to her specialist but never received a return phone call. Claimant's specialist had no recollection of a message from Claimant concerning employment or stopped employment. It is clear that Claimant's FIP benefits were not reduced due to employment income, which tends to establish that DHS never took action on Claimant's alleged reported employment. Claimant's story is also troubled by the fact that she did not make the allegation at a triage.

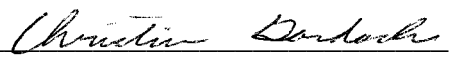
WEIs will not be terminated from a WPP program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 7. In processing a FIP closure, DHS is required to send the client a notice of non-compliance (DHS-2444) which must include: the date of 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.*

DHS held a triage on 9/10/12. It was not disputed that Claimant did not attend the triage. Claimant alleged that she never received notice of the triage though her confirmed mailing address appeared on the triage notice.

For Claimant to be found compliant, all of the following must be true: Claimant worked 40 hours/week, Claimant reported the employment to DHS but DHS failed to budget the employment, Claimant's employer happened to shut-down business in 10/2012 rendering Claimant's employment unverifiable and that Claimant did not receive notice of the triage. It is known that Claimant did not work 40 hours per week. Based on the presented evidence, Claimant failed to establish good cause for failing to attend WPP. Accordingly, the employment-related disqualification and FIP benefit termination were proper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP benefit eligibility, effective 10/2012, due to noncompliance with employment-related activities by Claimant. The actions taken by DHS are AFFIRMED.


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

Date Signed: January 31, 2013

Date Mailed: January 31, 2013

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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

