

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

**IN THE MATTER OF:**



Reg. No.: 2013145  
Issue No.: 1038 3029  
Case No.: [REDACTED]  
Hearing Date: January 9, 2013  
County: Wayne DHS (17)

**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, an in-person hearing was held on January 9, 2013 from Detroit, Michigan. Participants included the above-named claimant. Safaa Achemar testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included Sharisa Carpenter, Analyst, and Cheryl Coleman, 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 and his spouse'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 and his spouse were ongoing FIP benefit recipients.
2. Claimant was not an ongoing WPP participant due to an alleged long-term disability.
3. Claimant's spouse was not an ongoing WPP participant due to an alleged need to take care of Claimant.
4. On 7/13/12, the Medical Review Team terminated Claimant's ongoing deferral from WPP (see Exhibits 1-2).

5. On 8/14/12, DHS mailed Claimant and his spouse Work Participation Appointment Notices (Exhibits 4-5) scheduling Claimant to attend WPP on 8/28/12.
6. Claimant and his spouse failed to attend WPP on 8/28/12.
7. On 9/7/12, DHS initiated termination of Claimant's FIP benefit eligibility and reduction of Claimant's FAP benefit eligibility, effective 10/2012, due to the disqualification imposed by DHS.
8. On 9/7/12, DHS mailed Claimant a Notice of Noncompliance notifying Claimant of a triage meeting to be held on 9/13/12.
9. On an unspecified date, DHS determined that Claimant had no good cause for his and his spouse's failure to attend WPP.
10. On 9/20/12, Claimant requested a hearing to dispute the adverse actions taken by DHS.

### **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).

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 and his spouse. It was not disputed that Claimant and his spouse failed to attend a WPP orientation scheduled for 8/28/12. Claimant and his spouse also failed to make any attempts to attend WPP thereafter. The failure by Claimant or his spouse to attend WPP is sufficient to establish a basis for 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. 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 he was unable to attend WPP because of a long-term disability. Once a client claims a disability he/she must provide DHS with verification of the disability when requested. *Id.* The verification must indicate that the disability will last

longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.* The client will be required to fully participate in the work participation program as a mandatory participant. *Id.* For verified disabilities over 90 days, the specialist must obtain an MRT decision by completing the medical packet. *Id.* The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. *Id.*

An important distinction must be made. Claimant is not entitled to a decision to determine whether he is or is not disabled or whether he and his wife must participate with WPP. Claimant is entitled to a decision to determine whether he and his spouse had good cause for not attending WPP on his appointment date based on his physical and psychological issues.

It should also be noted that Claimant and his spouse did not specifically cite any specific obstacles on the WPP appointment date. Thus, Claimant must establish that his conditions are so disabling that it was not reasonable to expect Claimant and his spouse to make a single attempt to attend WPP. With the above information in mind, an analysis of Claimant's medical documents may be undertaken.

Claimant submitted a Medical Needs form (Exhibit 6) as evidence of his disability. The form was completed by claimant's primary care physician (PCP) and dated [REDACTED]. The treating physician noted that Claimant had hypertension, lumbar radiculopathy and a torn ligament. It was noted that Claimant sees the physician 1-2 times per month. It was noted that Claimant cannot work at his usual occupation or any job for 12 months. It was noted that Claimant had a need for assistance with meal preparation, shopping, laundry and housework. It was noted that the spouse was needed in the home to provide care for Claimant and that the spouse could not engage in work due to the extent of care required.

Claimant also produced an Assessment for FIP Participation (Exhibits 7-8). This form was completed by claimant's treating physician on [REDACTED]. The physician noted that Claimant could occasionally lift 10 pounds. The form required the physician to identify Claimant's standing and walking restrictions by choosing one of three options to describe Claimant's standing and/or walking capabilities in an 8 hour workday: less than 2 hours, at least two hours or at least 6 hours; the physician failed to identify a choice. The physician did not note any "other limitations" which are identified by examples such as a need for a hand-held assistive device (e.g. cane or walker). The physician did not note any mental limitations.

Claimant's PCP opined that Claimant is unable to work, but it is not known why Claimant cannot work. A diagnosis of lumbar radiculopathy is not uncommon and would not preclude WPP attendance. A restriction of lifting 10 pounds might prevent Claimant from performing strenuous work but would not necessarily prevent Claimant from performing the sedentary type of activities required at WPP. Further, there was no medical evidence (e.g. MRI report, prescriptions, need for physical therapy) to justify the restrictions or opinion that Claimant cannot work.

Claimant's PCP found that there was a need for Claimant's spouse to stay home with him due to the extent of care required by Claimant. A need for Claimant's spouse to stay home with Claimant suggests that Claimant is severely restricted in ambulation. The physician noted that Claimant is not-non-ambulatory. The physician also failed to cite any need that Claimant would have for a cane or a walker.

Claimant presented a letter (Exhibit 13) dated [REDACTED] from a physician treating Claimant's psychological impairments. The letter stated that Claimant was diagnosed with post-traumatic stress disorder (PTSD) and it was recommended that he stay off of work until further notice. Claimant included a copy of prescription papers dated [REDACTED] for: Abilify, Cymbalta, Xanax and Viibryd. A diagnosis of PTSD and requirement of medication is not so unusual that it would justify a conclusion that Claimant is unable to participate with WPP.

Claimant testified why he believes that he is incapable of attending WPP. Claimant stated that two years ago he was nearly choked to death while he worked as a security guard. He stated that he is very agoraphobic as a result. It is theoretically possible that a near-death experience could impact a person's psyche so that they are unable to work. The incident would be more compelling if Claimant was left with physical injuries; Claimant testified that he was not hospitalized, even immediately after the choking incident. The incident would be more compelling if it was recent or if Claimant was since psychologically hospitalized; it has been two years since the incident and Claimant has not been psychologically hospitalized.

It was also curious that Claimant has not applied for Social Security Administration (SSA) benefits. One would expect a client with a two year plus disability to seek such benefits. Claimant testified that he has not applied for SSA benefits because he believes that only persons 65 years of age may qualify for SSA benefits; Claimant's belief is erroneous.

Claimant testified that he has occasional anxiety attacks and his wife comforts him during such attacks. No evidence was presented concerning the frequency of such anxiety attacks. Under the present circumstances, the requirement that Claimant's spouse attend WPP with Claimant should be beneficial for Claimant.

Based on the presented evidence, Claimant failed to establish good cause for failing to attend WPP. Claimant's spouse similarly failed to establish good cause. Accordingly, the employment-related disqualification and FIP benefit termination were proper.

DHS is to disqualify a FAP group member for noncompliance when all the following exist:

- the client was active both FIP and FAP on the date of the FIP noncompliance;
- the client did not comply with FIP employment requirements;
- the client is subject to a penalty on the FIP program;
- the client is not deferred from FAP work requirements; and

- the client did not have good cause for the noncompliance. BEM 233B at 2.

Clients meeting one of the criteria below are temporarily deferred from FAP employment-related activities:

- Age: Defer a person who is under age 16 or at least age 60, a 16- or 17-year old who is not the grantee or a grantee age 16 or 17 in special circumstances.
- Care of a Child: Defer one person who personally provides care for a child under age six who is in the FAP group.
- Care of Disabled Household Member: Defer one person who personally provides care for a disabled member of his/her own FAP group.
- Disability: Defer persons incapacitated due to injury, physical illness or mental illness.
- Education: A student enrolled up to half time in any recognized school, training program or institution of higher education meets the employment-related activities requirement. This includes persons attending school for GED or adult high school completion.
- Employment: Persons employed, self-employed or in work study an average of 30 hours or more per week over the benefit period or earning on average the federal minimum wage times 30 hours per week are not required to participate in any further employment-related activities. This includes migrant or seasonal farm workers with an employer or crew chief contract/agreement to begin work within 30 days.
- Pregnancy: Defer pregnant women, beginning the seventh month of pregnancy or earlier if a pregnancy complication is medically documented.
- SSI-FAP Applicant: Defer applicants who apply for both SSI and FAP through the Social Security Administration. The application for SSI and FAP must be made at the same time.
- Substance Abuse Treatment Center Participant: Defer active participants in inpatient or outpatient programs for substance abuse treatment and rehabilitation. This does not include AA or NA group meetings. To verify use a verbal or written statement from the center.
- Unemployment Compensation (UC) Applicant or Recipient: Defer an applicant for or recipient of unemployment benefits. This includes a person whose unemployment benefits application denial is being appealed. BEM 230B (12/2011), pp. 3-5.

There was no dispute that the FAP benefit reduction was solely based on Claimant's and his spouse's noncompliance with WPP participation. It was determined above that the noncompliance findings by DHS were proper. DHS established all other requirements to justify a FAP benefit disqualification. It is found that DHS properly reduced Claimant's FAP benefit eligibility due to employment-related activity disqualification.

**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 and reduced Claimant's FAP benefit eligibility effective 10/2012 due to noncompliance with employment-related activities by Claimant and his spouse. The actions taken by DHS are AFFIRMED.



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

Date Signed: January 18, 2013

Date Mailed: January 18, 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:

