

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201320085
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: February 14, 2013
County: Oakland DHS (04)

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 February 14, 2013 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], Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's Family Independence Program (FIP) benefit eligibility due to Claimant's 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 FIP benefit recipient.
2. Claimant was not an ongoing WPP participant.
3. On 11/7/12, DHS mailed Claimant a Work Participation Program Appointment Notice to attend WPP on 11/20/12.
4. On 11/13/12, Claimant reported to DHS having disabilities which may defer her from WPP participation.

5. On 11/13/12, DHS mailed Claimant a Verification Checklist (VCL) requesting various medical forms to be completed by Claimant's physicians.
6. The VCL due date was 11/26/12
7. On 11/20/12, Claimant failed to attend WPP.
8. On 11/26/12, DHS mailed a second VCL to Claimant requesting medical forms to support a deferral, because Claimant had still not returned the requested medical documents.
9. On 11/30/12, DHS mailed Claimant a Notice of Case Action initiating termination of Claimant's FIP benefit eligibility, effective 1/2013, due to noncompliance with WPP participation.
10. On 11/30/12, DHS mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage appointment on 12/7/12.
11. On 12/7/12, Claimant failed to attend the triage.
12. On 12/21/12, Claimant requested a hearing disputing 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, 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).

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in the work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (11/2012), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *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.
- BEM 233A (11/2012), p. 1-2

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.*

The present case involves a FIP benefit termination, effective 1/2013, based on an employment disqualification imposed against Claimant. It was not disputed that DHS mailed Claimant a Work Participation Program Appointment Notice, informing Claimant of an obligation to attend WPP on 11/20/12. Claimant failed to attend the WPP orientation scheduled for 11/20/12. Claimant contended that she did not attend the orientation because she did not receive the notice to attend WPP.

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). Claimant testified that she had trouble receiving her mail. Claimant presented no evidence to support the testimony. It was not disputed that DHS mailed the notice to attend WPP to Claimant's reported mailing address. Claimant failed to rebut the presumption of proper mailing. It is found that Claimant received the notice to attend WPP. The failure by Claimant to attend WPP orientation, or any dates thereafter, 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 she 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.*

It was not disputed that Claimant reported to DHS having a long-term disability which could defer her from WPP participation. It was not disputed that DHS mailed Claimant two Verification Checklists requesting medical forms which could verify Claimant's alleged disability. It was also not disputed that Claimant failed to meet either VCL deadline. However, it was also not disputed that DHS was aware that the deadline was missed, in part, due Claimant's treating psychological facility misplacing Claimant's paperwork.

For FIP benefits, DHS is to allow the client 10 calendar days to provide requested verification. BAM 130 (5/2012), p. 5. For Medical Assistance (MA) benefits, DHS is to allow the client 10 calendar days to provide requested verification. *Id.* For MA benefits, if the client cannot provide the verification despite a reasonable effort, DHS is to extend the time limit up to three times. *Id.* DHS regulations do not clarify why clients can receive additional time when MA benefits are affected. Presumably, the allowance of extra time is justified due to the obstacles in obtaining medical forms. The timely completion of medical forms typically requires delays in awaiting medical appointments. The treating physician may also require additional time to complete forms, creating further delays.

The present FIP benefit case has an MA benefit flavor because of the relevance of medical documents. Due to the involvement of physician completed medical forms, it is believed that DHS allows extensions for the return of such forms, even if such forms are relevant to a FIP benefit determination.

DHS established that Claimant was given two opportunities to return medical documentation and that Claimant failed to meet the deadlines. The specialist testified that Claimant may have been given additional time had Claimant attended the triage. The triage is relevant to a good cause determination but a failure to attend should not deny a client an opportunity to submit medical documentation related to a potential deferral.

Claimant repeatedly failed in attending appointments and meeting paperwork deadlines. Claimant's provided excuses were unverified other than a smattering of evidence hinting

that her psychological impairments prevented her from attending appointments and meeting deadlines. Generally, the evidence was unflattering for Claimant.

On the other hand, Claimant at least verified that her impairments directly affected her ability to comply with appointments and deadlines. It was also established that there was a delay in returning medical documents because of an error by Claimant's treating psychological facility. It was also established that Claimant eventually submitted documents necessary for an evaluation of WPP deferral, though it was not disputed that the documents were submitted late. It was also established that Claimant was deferred from WPP participation in the past due to various impairments.

Despite reasonably persuasive evidence justifying the termination of FIP benefits, it would unjust to impose an employment-related disqualification on Claimant without first medically evaluating her ability to attend WPP. Accordingly, it is found that Claimant was entitled to an extension of time in returning medical documentation. Accordingly, 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. It is ordered that DHS initiate:

- (1) redetermination of Claimant's FIP benefit eligibility, effective 1/2013, subject to the finding that Claimant was improperly denied an extension to return medical documentation for a WPP deferral;
- (2) processing of a supplement for any benefits lost as a result of the improper finding of noncompliance; and
- (3) removal of 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: 2/19/2013

Date Mailed: 2/19/2013

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:

