**IN THE MATTER OF:**

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| Reg. No.: | 201328106 |
| Issue No.: | 1038 |
| Case No.: | ██████ |
| Hearing Date: | March 25, 2013 |
| County: | Wayne DHS (57) |

**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 March 25, 2013, from Detroit, Michigan. Participants included the above-named claimant. Participants on behalf of Department of Human Services (DHS) included ███████ Manager.

## ISSUE

The issue is whether DHS properly terminated Claimant's eligibility for Family Independence Program (FIP) and reduced Claimant's eligibility for Food Assistance Program (FAP) benefits due to noncompliance with Partnership- Accountability – Training - Hope (PATH) 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 FAP benefit recipient.

2. Claimant was an ongoing PATH participant.

3. Claimant had a 30 hour / week PATH attendance requirement.

4. Claimant attended PATH for an unspecified amount of hours less than 30/week.

5. On 1/2/13, DHS mailed Claimant a Notice of Case Action initiating a termination of FIP benefit eligibility and reduction of FAP benefit eligibility, effective 2/2013, due to noncompliance with PATH participation.

6. On 1/2/13, DHS imposed a pending employment disqualification against Claimant and mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage to be held on 1/8/13.

7. On 1/8/13, Claimant attended the triage and claimed good cause based on a need to watch a minor child for which he shared custody.

8. DHS determined Claimant lacked good cause for failing to attend PATH.

9. On 2/1/13, 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 2/2013, 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 PATH on 1/17/13. It was not disputed that Claimant failed to attend the orientation or any dates thereafter. Claimant's failure to attend PATH is a sufficient basis for noncompliance.

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*.

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*., 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 attended the triage. At the triage, Claimant stated that he was unable to meet his weekly PATH attendance because he spent many days providing child care for his 3-year old son. The evidence established that Claimant shared custody of his son with the biological mother. Claimant testified that he watched the child to help out the mom while she was working. Claimant submitted a note, purportedly from the biological

mother, verifying his testimony. Claimant also testified that he was in the process of gaining full custody of the child. This testimony was somewhat verified in that the child was added to Claimant's benefit case beginning 3/2013.

Claimant's testimony has some validity. At the time that Claimant was sent to PATH, he could not have received day care benefits for his son because his son was on the biological mother's case. Thus, Claimant had a decent argument for good cause.
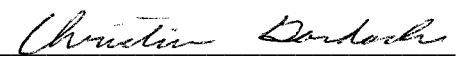
Claimant's basis for good cause is not overwhelmingly persuasive. Claimant did not make it clear why he had the responsibility to watch his child while the mother worked. It was also troublesome that Claimant did not raise the issue prior to triage. Nevertheless, the evidence tended to verify Claimant's excuse. It also helped Claimant that he made some efforts to attend PATH. Based on the presented evidence, Claimant established good cause for failing to participate with PATH. Accordingly, the FIP benefit termination and FAP benefit reduction were 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 and reduced Claimant's FAP benefit eligibility. It is ordered that DHS:

(1) redetermine Claimant's FIP and FAP benefit eligibility, effective 2/2013, subject to the finding that Claimant established good cause for WPP absences;
(2) process a supplement for any benefits lost as a result of the improper finding of noncompliance; and
(3) 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: 3/29/2013

Date Mailed: 3/29/2013

**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


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cc: