

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

IN THE MATTER OF:



Reg. No.: 201329125
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: March 25, 2013
County: Wayne DHS (15)

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 [REDACTED], Manager.

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 12/1/12, DHS mailed Claimant a Work Participation Program Appointment Notice to attend WPP on 10/15/12.
4. Claimant failed to attend WPP.

5. On 12/28/12, DHS imposed an employment-related disqualification against Claimant and mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage meeting to be held on an unspecified date.
6. On 12/28/12, DHS mailed Claimant a Notice of Case Action initiating termination of Claimant's FIP benefit eligibility, effective 2/2013, due to noncompliance with WPP participation.
7. Claimant failed to attend the triage meeting.
8. Claimant failed to receive the orientation and triage notices.
9. DHS determined that Claimant had no good cause for her failure to attend WPP.
10. On 2/11/13, 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 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 12/17/12. It was not disputed that Claimant failed to attend the WPP orientation. It is found that DHS established a 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.

It was not disputed that Claimant also failed to attend a triage meeting to discuss good cause for her failure to attend WPP. Claimant contended that she did not attend the WPP orientation or triage because she did not receive either of the notices to attend.

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 was a renter. Claimant testified that her landlord performed major plumbing and roofing repairs on Claimant's residence over a period from 12/2012 to 1/2013. Claimant testified that she moved out of her residence and lived elsewhere during the six week period. Claimant testified that she left a forwarding address with the United States Post Office but that the USPS did not always forward her mail.

Claimant presented DHS with a signed statement from her landlord. The landlord's statement noted that Claimant moved out of her normal residence for a six week period due to roofing and plumbing repairs. The statement tended to verify Claimant's testimony.

Claimant requested her hearing on a generic Request for Hearing form; the form is generic because it is not tied with a specifically dated Notice of Case Action. Claimant's use of the generic form is consistent with her testimony in that it tends to show that Claimant did not receive a Notice of Case Action, which tends to show that Claimant had problems receiving mail.

Claimant's Request for Hearing date also shows consistency with Claimant's testimony. If Claimant did not receive a notice of the benefit terminations, she would not have been aware of a FIP termination until the effective month, 2/2013. Claimant requested a hearing on 2/11/13 which is consistent with not receiving mail.

DHS contended that Claimant could have reported a change in address with them when she temporarily moved from her residence. DHS also noted that Claimant could have periodically checked the mail at her residence at some point during her absence from the residence. Both DHS points were reasonable, however, Claimant's reliance on an address change with the post office was also reasonable.

Overall, Claimant's testimony that she did not receive a notice to attend WPP or a notice of triage was credible and sufficiently verified. The failure to receive notices is found to be good cause. 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 2/2013, subject to the finding that Claimant established good cause for her failure to attend WPP;

- (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: 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

CG/hw

cc:

