

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

[REDACTED]

[REDACTED]

Reg. No.: 201316637
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: January 30, 2013
County: Wayne DHS (35)

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 30, 2013, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUES

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 FIP benefit recipient.
2. Claimant was not an ongoing WPP participant.
3. Claimant reported to DHS that she had a long-term disability.
4. DHS did not evaluate Claimant for WPP deferral based on long-term disability.
5. On an unspecified date, DHS sent Claimant to attend a WPP orientation.
6. Claimant failed to attend the WPP orientation.

7. On 11/28/12, DHS initiated termination of Claimant's FIP benefit eligibility effective 1/2013 due to WPP noncompliance.
8. On 12/06/12, Claimant requested a hearing to dispute the FIP benefit termination.

CONCLUSIONS OF LAW

FIP was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* DHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. DHS policies are contained 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 Jobs, Education and Training (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.*, pp. 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 an 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.

It was not disputed that DHS mailed Claimant a notice informing Claimant of a WPP appointment and that Claimant failed to attend the appointment. It was also not disputed that Claimant made no efforts in attending WPP following the missed appointment. Claimant's total absence from WPP was a sufficient basis for DHS to determine that Claimant was noncompliant with WPP attendance.

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. An important distinction must be made. Claimant is not entitled to a decision to determine whether she is or is not disabled or whether she must participate with WPP. Claimant is entitled to a decision to determine whether she had good cause for not attending WPP on the scheduled appointment date.

DHS failed to identify a specific date that Claimant did not attend WPP. Typically, this failure is fatal for DHS. A client is exceptionally disadvantaged in establishing good cause for a failure to attend WPP when it cannot even be stated what dates were not attended. In the present case, specific dates do not matter. Claimant conceded that she did not go to WPP and that she was not going to WPP no matter what the date. Claimant stated that she is physically incapable of attending WPP.

Clients who essentially refuse to attend WPP have an exceptionally high burden to meet. In such cases, good cause would likely only be found if significant medical documentation verified that Claimant was virtually incapable of leaving the house. Claimant presented DHS with a single form completed by her physician. The form verified that Claimant's physician opined that Claimant was incapable of working. The physician's opinion was completely unsupported by medical evidence.

Had the only issue been whether Claimant established good cause for failing to attend WPP, Claimant would have likely received an unfavorable hearing decision. However, it

must also be determined whether DHS evaluated Claimant for a long-term disability prior to sending her to WPP.

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.*

The testifying DHS specialist assumed that Claimant's long-term disability was evaluated by MRT. The specialist conceded that she did not possess an MRT decision. Even accepting the assumption of DHS as true, there was a question of when the MRT decision occurred. The testifying specialist possessed medical documents from 5/2011, approximately 1.5 years prior to the WPP appointment date (assuming an appointment date of 11/2012). DHS failed to establish that Claimant was assigned to WPP within a reasonable time after an MRT deferral. This failure is problematic because 1.5 years is so long, it is reasonably possible that Claimant's condition worsened or that new conditions arose.

Based on the presented evidence, it is found that DHS failed to establish following the procedures for evaluating Claimant for a long-term disability. 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 DHS failed to establish for a long-term disability;
- (2) supplementing Claimant 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: February 6, 2013

Date Mailed: February 6, 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 to:

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

CG/hw

cc:

