

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

IN THE MATTER OF:



Reg. No.: 201320122
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: February 13, 2013
County: Wayne DHS (49)

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 13, 2013 from Detroit, Michigan. Participants included the above-named 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 an ongoing WPP participant as of 9/17/12.
3. Claimant continued WPP participation through the week beginning 9/30/12.
4. Claimant ceased participation with WPP as of the week beginning 10/7/12.
5. On 10/25/12, WPP mailed Claimant a letter warning of noncompliance due to poor WPP attendance, advising Claimant to return to WPP on 11/1/12.

6. Claimant failed to return to WPP.
7. On 11/2/12, DHS mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage to be held on 11/8/12.
8. On 11/2/12, DHS mailed Claimant a Notice of Case Action initiating termination of Claimant's FIP benefit eligibility, effective 12/2012, due to noncompliance with WPP participation.
9. On 11/8/12, Claimant failed to attend the triage.
10. On 12/17/12, 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 12/2012, based on an imposed employment disqualification against Claimant. It was not disputed that Claimant ceased WPP attendance as of the week beginning 10/14/12. Claimant's absences continued even after WPP mailed Claimant a letter advising Claimant to return to WPP on 11/1/12. Claimant's WPP absence from 10/15/12 through 11/1/12 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.* at 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.* at 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. 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. There was no dispute that DHS evaluated Claimant for a disability and determined that Claimant was capable of attending WPP. Claimant is not entitled to an administrative hearing decision to determine whether she is or is not disabled. Claimant is entitled to a decision to determine whether she had good cause for not attending WPP.

Claimant presented medical documents to support her claim of disability (Exhibits 1-3). A physician letter dated [REDACTED] noted that Claimant was previously diagnosed with severe syringomyelia. It was noted that Claimant complained of increasing neck pain, headaches and hand weakness. It was noted that a neurological examination confirmed some weakness in Claimant's hands. It was noted that an MRI verified that Claimant's cord showed significant improvement compared to a preoperative MRI. The documents also noted that Claimant was going to be sent to physical and occupational therapy.

It should be noted that Claimant does not receive SSA benefits. Claimant also has access to medical treatment and prescriptions through Medicaid.

Claimant's claim of good cause was imperfect. A forty day time lapse between Claimant's first WPP absence and verified medical treatment is relatively lengthy. Further, the medical evidence suggested that Claimant's most severe medical problems are in the past.

The time between Claimant's verified diagnosis and WPP absences is lengthy but not unreasonable. It was verified that Claimant was diagnosed with a condition requiring physical and occupational therapy. The verified need for physical and occupational therapy is consistent with serious ongoing medical problems. Based on the presented medical evidence, it is reasonable to presume that the medical problems were in existence during the time Claimant was referred to WPP.

It is found that Claimant established good cause for her failure to participate with WPP. Accordingly, the employment-related disqualification and termination of FIP benefit eligibility are found to be improper.


As noted above, this administrative decision is restricted to finding good cause for Claimant's past WPP absences. This decision does not defer Claimant from future WPP participation.

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 12/2012, subject to the finding that Claimant established good cause for her WPP absences;
- (2) processing to supplement 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: 2/22/2013

Date Mailed: 2/22/2013

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:

