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*When 24 weeks
benefits*

DECISION OF BOARD OF REVIEW

In the matter of:

Appeal number:

BR- 251866-CTRM

CLAIMANT APPELLANT:

Office #22

On March 1, 2000, the West Roxbury Division of the District Court remanded this case, Civil Action No. 9906CV0122 to the Board of Review. On May 10, 2000, in Boston, Massachusetts, the Board reviewed the written record and transcripts and recordings of the testimony presented at the hearings held on December 30, 1998 and April 6, 2000.

The Board's decision of February 12, 1999, issued in accordance with the provisions of section 41 of Chapter 151A of the General Laws, the Massachusetts Employment and Training Law (the Law), affirmed the Deputy Director's decision, issued on January 4, 1999, which denied benefits to the claimant. The claimant exercised her right of appeal to the courts under M.G.L.c. 151A, §42.

This case was remanded by the District Court with the following specific directive for the review examiner to consider in conducting the remand hearing and in making her consolidated findings of fact:

- a. the extent and nature of all information the plaintiff received from the agency concerning training benefits under G.L.c.151A, section 30(c), including specific information regarding the requirement that programs be completed within one year, including entry into evidence of any such printed notices or information, or copies of such notices or information;
- b. the date plaintiff filed her application for training benefits, including entry into evidence of the application;
- c. the date the agency denied her application;
- d. the date the agency gave notice of its denial to the claimant;
- e. the dates and number of inquiries, if any, the plaintiff made about the status of her application;
- f. the plaintiff's understanding of the status of her application following each such inquiry;
- g. whether the agency gave notice that, following the denial, the plaintiff had two weeks to which to enroll in an approved program;
- h. whether the training program could have been completed within one year.

The case was received at the Board from the court on March 8, 2000. The case was remanded by the Board to the Deputy Director on March 14, 2000 for the making of the court requested additional findings of fact. The case was returned to the Board on April 28, 2000.

The Board has reviewed the entire case to determine whether the Deputy Director's decision was founded on the evidence in the record and was free from any error of law affecting substantial rights.

The claimant's appeal is from the Deputy Director's decision which concluded:

In accordance with Section 30 of the Law and the regulations at 430 CMR a claimant who applies...for training shall have her total benefits extended up to 18 times her benefit rate after exhaustion of all Extended benefits, Extended Unemployment Compensation, or other Federal Extended benefits. Such benefits shall be paid only if the training program meets certain standards.'

As defined in the regulations at 430 CMR, 9.05, (Approval of Training Programs), Training Programs must meet certain measurable standards as set forth in 430 CMR 9.05(2)(a) through (e). Section (c) of those regulations state that the program must "be completed within one year, except that this time limit may be extended to a maximum of 1 1/2 years if the program includes a combination of basic skills and vocational training and the basic skills component does not exceed a total of six months".

In the claimant's case, it has not been established that the program will be completed within one year. The claimant began the program in October, 1998 and does not expect to receive a certificate until January, 2000, fifteen months later.

This examiner considered whether the one year time limit may be extended as referred to above. In the claimant's case, the one year time limit cannot be extended because the program she attends does not include a combination of basic skills and vocational training. According to regulations at 430 CMR, 9.03, "Basic Skills" are course offering A.B.E., E.S.L., or G.E.D. preparation, either individually or in combination. The claimant's training in electroneurodiagnostics cannot qualify as basic skills courses.

In accordance with Section 24(b) of the Law, to be eligible for benefits, a claimant must be capable of, available for and unable to obtain work in her usual occupation or any other occupation for which she is reasonably fitted.

Since October 5, 1998, the claimant has been attending a program full-time. Because of this, she has been unable to work full-time work. Since the claimant is not available for full-time work, she does not meet the requirements of Section 24(b) of the Law.

Based on the Law, this examiner has no alternative but to find that the training program at Children's Hospital does not meet the requirements of the Law and regulations, and that [sic] claimant is not entitled to benefits while attending the training program; she has not met the requirements of Section 24(b) of the Law.

The claimant's benefits shall cease as of the week ending October 10, 1998 and for an indefinite number of weeks thereafter until she meets the requirements of the Law.

Sections 24(b), 24(c), and 74 of Chapter 151A of the General Laws and 430 CMR 9.05(2)(c), 9.06(2)(3)(4)(b) are pertinent and provide, in part, as follows:

Section 24. An individual, in order to be eligible for benefits under this chapter, shall-

- (b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted; and
- (c) An individual who is certified as attending an industrial retraining course or other vocational training course as provided under section thirty shall be deemed to be available for work under clause (b) of the first paragraph of this section.

Section 74. This chapter shall be known and may be cited as the Employment and Training Law, and shall be construed liberally in aid of its purpose, which purpose is to lighten the burden which now falls on the unemployed worker and his family.

430 CMR 9.05 (2)(c)

- (2) Training programs must meet certain measurable standards as set forth in 430 CMR 9.05(2)(a) through (e):
 - (c) Be completed within one year, except that this time limit may be extended to a maximum of 1½ years if the program includes a combination of basic skills and vocational training and the basic skills component does not exceed a total of six months.

430 CMR 9.06(2)(3)(4)(b)

- (2) If an application is made during or prior to the 15th compensable week of a claim, and such application is subsequently denied because the particular training program does not meet the standards of 430 CMR 9.05, then the Commissioner may allow the claimant one additional opportunity to file a new application for training. Such extension shall consist of the first two calendar weeks following the week in which the claimant receives in hand or is mailed a denial under M.G.L. c. 151A, § 30(c), or of the first two calendar weeks following the 15th compensable week, whichever is later. This additional period applies only to those claimants who have been deemed to be in need of training pursuant to 430 CMR 9.04.
- (3) DET shall make every reasonable effort to approve or deny the claimant's application no later than five working days after completion of the application.
 - (a) If the application is approved prior to the commencement of the program in question, such approval shall be preliminary, and shall become final upon the claimant's being in attendance at the program and being otherwise eligible for benefits.
 - (b) A claimant who begins a training program prior to final approval of an application shall not be eligible for waiver under 430 CMR 9.07(2) of the requirements for work search or availability for suitable work from the first date of such attendance until the date claimant's application is approved.

(c) The application will be deemed complete:

1. on the date the completed application form provided by DET is received by DET if the training program has already been approved under 430 CMR 9.05 or Title III of the JTPA;
2. on the date all documentation and information regarding the training program which has been required by DET is received by DET if the program has not previously been approved, provided that all such information and documentation must be received no later than five working days prior to the commencement of the program.

(4) The 15-week application period provided in 430 CMR 9.04(2)(b) shall be tolled if any of the following three conditions occur:

- (b) If DET denies a claimant's application after the period provided in 430 CMR 9.06(3) because the training program applied for does not meet the requirements of 430 CMR 9.05 and the claimant's opportunity for reapplying for training during the 15 week period is thereby decreased by two weeks or more, then the 15 week period shall be tolled from the date the claimant first applied for training until the date of DET's denial.

The Deputy Director's representative held a hearing on December 30, 1998. The claimant appeared. The Board remanded the case to the Deputy Director to take the court ordered additional testimony and to make additional and consolidated findings of fact. At the remand hearing held on April 6, 2000, the claimant appeared with counsel. Although a representative from the section 30 Department of the Division of Employment and Training was invited to participate in the court remand hearing, no representative appeared. The Deputy Director's representative then consolidated her final findings of fact as follows:

1. In May 1998, the claimant filed a claim for unemployment benefits.
2. Shortly after the claimant filed her claim, the Department of Employment and Training sent her a written pamphlet with information about unemployment benefits. The pamphlet included some information about Training Program benefits. It contained information which stated that the law provided for an extension of unemployment benefits while attending training if an applicant applied by the end of the 15th paid week of his claim. The written information did not include any information which stated that a training program had to be completed within one year.
3. The claimant filed her application for training benefits in August 1998. She filed the application in person to the Department within the 15th paid week of her claim.
4. A copy of the application is not available.
5. In an internal Department memo, the Department denied the claimant's application on August 13, 1998. The claimant was not notified of this denial.
6. At the time she filed her application, the claimant asked the Department representative if there was anything else she needed to do. The Department representative told the claimant that she had the application in within fifteen weeks and as long as it was an accredited training program, there should not be a problem.

7. On or about September 10, 1998, the claimant contacted the Department and spoke to a representative. When the claimant inquired about her application, the representative told the claimant her application was still in process and not to worry about it. The representative told the claimant she had gotten the application in within fifteen weeks and as long as it was an accredited training program, the claimant would be all set.
8. In about the third week of September 1998, the claimant contacted the Department to inquire about her application. The Department representative told the claimant that they had received the application within 15 weeks, it was under review and as long as it was an accredited program, she would be hearing shortly.
9. After she began the Program in October 1998, the claimant was notified on her Certification Card to contact the telephone service center which she did. The claimant and the Department representative played "telephone tag" until they finally spoke. The Department representative told the claimant she might have to resubmit the paperwork because she did not know where the claimant's paperwork was. The claimant told the representative that she had already begun the training program and as long as it was noted that she had originally applied in August 1998, the claimant would resubmit the paperwork. The representative told the claimant that as long as she had the papers in within the 15 weeks (which she had) and the program was accredited, the claimant would receive the benefits.
10. On October 5 (the week ending October 10), 1998, the claimant began attending an Electroneurodiagnostic Training Program at Children's Hospital (the "Program").
11. Prior to the fall of 1998, when the claimant began attending the Program, it had been a one year program for close to forty years. Other individuals had attended the program, and applied for and received Section 30 benefits. Had the claimant known that she needed to complete the program in one year, this could have been done. The Director of the program made this known to the claimant in October 1998 after she learned of the denial of her application.
12. The agency notified the claimant of the denial of her application in a Determination of Eligibility of Training Opportunity Benefits (the "Determination"). The Determination was mailed to the claimant on October 15, 1998. The claimant received it shortly thereafter.
13. At all times before she received the Determination, the claimant understood there was no problem with her application because she was told by the Department representatives that she had complied with the fifteen week requirement and knew that her Program was accredited.
14. The Determination indicated that "the training program chosen will not be completed within one year."
15. The Determination contains a block, which states, "You are entitled to a two week extension to file a new application for benefits". The block preceding it is not check [sic] off. The Determination contains the following statement, "Your last day to file a new application for training is _____". There was no information written on this blank line.
16. At no time before she received the Determination in October 1998, was the claimant informed that her application had been denied.
17. The claimant did not learn of the one year requirement until she received the Determination in October 1998.

