

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

IN THE MATTER OF:



Reg. No.: 2013-36804
Issue Nos.: 1005,1038
Case No.: [REDACTED]
Hearing Date: April 25, 2013
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 conducted from Detroit, Michigan on Thursday, April 25, 2013. The Claimant appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED] JET Coordinator.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case due to a failure to participate in employment and/or self-sufficiency-related activities without good cause?

Did the Department properly deny Claimant's application for FIP benefits?

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 recipient of FIP benefits.
2. Claimant was previously deferred from participating in the Partnership. Accountability. Training. Hope. (PATH) program due to post-partum recovery.

3. Claimant's deferral from PATH ended and on January 2, 2013, the Department sent Claimant a PATH Appointment Notice instructing her to attend a work participation program orientation on January 15, 2013. (Exhibit 4)
4. Claimant was unable to attend the January 15, 2013 PATH appointment and on, January 17, 2013, the Department sent Claimant a second PATH Appointment Notice instructing her to attend a work participation program orientation on January 22, 2013. (Exhibit 5)
5. On January 23, 2013, the Department sent Claimant a Notice of Noncompliance instructing her to attend a triage appointment on January 31, 2013 to discuss whether good cause existed for the noncompliance. (Exhibit 6)
6. On January 23, 2013, the Department sent Claimant a Notice of Case Action informing her that the Department intended to terminate her FIP benefits effective March 1, 2013 for failure to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit 7)
7. Claimant's FIP case closed effective March 1, 2013 for failure to participate in employment and/or self-sufficiency-related activities without good cause and a six month sanction was imposed.
8. Claimant submitted an application for FIP benefits on March 6, 2013.
9. Claimant's application was denied because her FIP case closed due to noncompliance without good cause and a penalty was imposed.
10. On March 25, 2013, the Department received the Claimant's request for a hearing disputing the closure of her FIP case and the denial of her FIP application.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities. BEM 233A (January 2013), p. 1. The WEI can be considered noncompliant for several reasons including: failing or

refusing to appear and participate with the work participation program or other employment service provider, failing or refusing to appear for a scheduled appointment or meeting related to assigned activities, and failing or refusing to participate in employment and/or self-sufficiency related activities. BEM 233A, pp 1, 2. 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, pp. 3, 4.

Good cause includes any of the following: the client is employed for 40 hours/week, the client is physically or mentally unfit for the job, the client has a debilitating illness or injury or a spouse or child's illness or injury requires in-home care by the client, the Department, employment service provider, contractor, agency or employer failed to make a reasonable accommodation for the client's disability, no child care, no transportation, the employment involves illegal activities, the client experiences discrimination, an unplanned event or factor likely preventing or interfering with employment, long commute or eligibility for an extended FIP period. BEM 233A, p. 4. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p.1.

In processing a FIP closure, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance; the reason the client was determined to be noncompliant; and the penalty duration. BEM 233A. p.8-9. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (November 2012), p. 9. Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 7. A triage must be conducted and good cause must be considered even if the client does not attend. BEM 233A, pp.7-8 Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 7.

Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 8. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 6.

In this case, Claimant was an ongoing recipient of FIP benefits. Claimant was previously deferred from participating in a work participation program due to post-partum recovery. Because Claimant's deferral ended, on January 2, 2013, the Department sent Claimant a PATH Appointment Notice instructing her to attend an appointment on January 15, 2013. (Exhibit 4). Claimant testified that she was not able to attend this appointment and requested a new appointment. On January 17, 2013, the Department sent Claimant a second PATH Appointment Notice instructing her to attend an appointment for PATH on January 22, 2013. (Exhibit 5). Claimant did not attend the second PATH appointment. The Department testified that due to Claimant's missing the PATH appointment on January 22, 2013, the Department sent Claimant a Notice of Noncompliance dated

January 23, 2013 instructing her to attend a triage appointment on January 31, 2013 to discuss whether good cause existed for the noncompliance and lack of attendance at PATH. (Exhibit 6). On January 23, 2013, the Department also sent Claimant a Notice of Case Action informing her that the Department intended to terminate her FIP benefits effective March 1, 2013 for failure to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit 7). BEM 233A, pp. 7-9; BAM 220, p. 9.

A triage meeting was conducted on January 31, 2012 for which Claimant did not appear. The Department concluded that Claimant did not have good cause for her missing the PATH program appointment and closed Claimant's FIP case effective March 1, 2013 for failure to participate in employment and/or self-sufficiency-related activities without good cause and a six month sanction was imposed. BEM 233A, p. 8. The Department acknowledged that the imposition of the six month penalty was improper and the correct penalty should be three months, as this was Claimant's first occurrence of noncompliance without good cause. BEM 233A, p. 6.

At the hearing, Claimant testified that she never received the January 17, 2013 PATH Appointment Notice, nor did she receive the Notice of Noncompliance informing her of the triage meeting date. She also stated that she received the Notice of Case Action more than one month after it was sent. The Department testified that one piece of mail unrelated to this case was returned as undeliverable on January 29, 2013. This was sent to the same address provided by Claimant. There was no other mail returned to the Department as undeliverable. Claimant verified that the address the Notices were sent to was the correct address for those dates and stated that she has no problems with receiving her mail on time. Claimant testified that she does not believe the Department mailed her the Notices. Therefore, Claimant failed to rebut the presumption that she received the Notice and good cause was not established as to why she did not attend the triage meeting on January 31, 2013. See *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270, 275-278 (1976).

Because there was no good cause established for Claimant's lack of attendance at the scheduled PATH appointment and the triage meeting, the Department acted in accordance with Department policy when it closed Claimant's FIP case based on noncompliance with employment and/or self-sufficiency-related required activities without good cause. However, the Department did not act in accordance with Department policy when it improperly imposed a six month sanction for Claimant's first occurrence of noncompliance without good cause. Accordingly, the Department's actions are AFFIRMED in part and REVERSED in part.

Additionally, after Claimant's FIP case was closed effective March 1, 2013, she submitted a new application for FIP benefits on March 6, 2013. The Department denied Claimant's application, as her case was closed and sanctioned for a previously determined noncompliance without good cause. As discussed above, because the Department acted in accordance with Department policy when it closed Claimant's FIP case, the Department acted in accordance with Department policy when it denied Claimant's March 6, 2013 application for FIP benefits as she was currently serving a

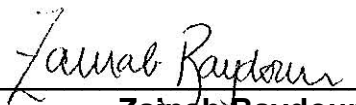
penalty for noncompliance and was not eligible to receive FIP benefits. Accordingly, the Department's actions are AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with Department policy when it terminated Claimant's FIP benefits due to noncompliance without good cause and denied Claimant's March 5, 2013 application for FIP benefits. It is further found that the Department did not act in accordance with Department policy when it improperly imposed a six month sanction for Claimant's first occurrence of noncompliance without good cause. Accordingly, the Department's actions are AFFIRMED in part and REVERSED in part.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the six month penalty imposed on Claimant's FIP case for her first occurrence of noncompliance without good cause; and
2. Impose a three month penalty.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 1, 2013

Date Mailed: May 1, 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

Re consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

ZB/cl

cc:

