

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-35912

Issue No: 1012;3008

[REDACTED]

Hearing Date: June 20, 2013
Washtenaw #22 County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on June 20, 2013. Claimant personally appeared and testified. The department was represented by PATH Worker [REDACTED] and Family Independence Manager [REDACTED].

ISSUE

Did the Department of Human Service (the department) properly propose to cancel claimant's Family Independence Agency (FIP) benefits based upon its determination that claimant did not participate in mandatory Work First (PATH) activities?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On August 21, 2012, claimant filed an application for Family Independence program benefits for herself and her 16 year old son.
- (2) On October 11, 2012, claimant's 54 E states that she cannot attend PATH, so claimant was deferred from the PATH program.
- (3) On December 18, 2012, an FSSP appointment was conducted with claimant and assigned claimant to fill out and turn in activity logs on a weekly basis.
- (4) Claimant turned in a total of four activity logs from December 18, 2012 forward.
- (5) On March 12, 2013, the department sent claimant a Notice of Non-compliance (DHS 2444) with a triage scheduled for March 18, 2013.

- (6) On March 18, 2013, claimant attended the triage meeting and stated that she has brain trauma and forgot to turn in the activity logs.
- (7) The department caseworker found that claimant had not established good cause for her failure to participate in PATH activities and made a no good cause determination in claimant's case.
- (8) Claimant's FIP case was cancelled as a 3rd time/lifetime sanction and her Food Assistance Program case was sanctioned \$ [REDACTED] per month for non-compliance.
- (9) On March 19, 2013, claimant filed a request for a hearing to contest the negative action.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Department of Human Services (DHS) requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. The focus is to assist clients in removing barriers so they can participate in those activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate without good cause. Non-compliance may be an indicator of possible disabilities and the department is considered further exploration of any barriers. BEM, Item 233A.

At application, the registration support staff must provide clients with a DHS-619, Jobs and Self-Sufficiency Survey. For applications received from MI Bridges, the questions from the DHS-619 have been incorporated into the screens. Specialists must do all of the following:

- Review the survey or the PDF copy of the application from MI Bridges, and other information in the case record and Bridges during the intake interview to make a preliminary barrier assessment to determine the client's readiness for PATH referral.
- Be alert to indicators that the client or family members suffer from undisclosed or undiagnosed disabilities. Some disabilities diminish the individual's ability to recognize or articulate his/her needs or limitations. Temporarily defer clients who need further screening or assessment.
- Identify and provide direct support services as needed. Child care and transportation barriers are common. DHS is responsible and must assist clients who present with child care or transportation barriers before requiring PATH attendance; see BEM 232 Direct Support Services.
- Open/edit the Family Self-Sufficiency Plan (FSSP) and enter strength and barrier information identified and addressed during the intake process.
- Temporarily defer an applicant with identified barriers until the barrier is removed.
- Temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made, such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities.

Note: Clients should not be referred to orientation and AEP until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. BEM, Item 229, pages 1-2.

In the instant case, the facts are not at issue. Claimant alleged that she had a health problem (traumatic brain injury) which prevented her participation in assigned activities, which was turning in weekly activity logs. Claimant did provide a DHS-54E which stated that she could not attend PATH, so she was deferred from the PATH program. This administrative law judge finds that the evidence contained in the file does not support that the claimant has not established good cause for her failure to turn in her weekly activity logs. According to claimant, she has a psychiatric diagnosis of brain trauma which causes her memory problems. The department did not refute her allegation. Thus, this Administrative Law judge must find that claimant's testimony is credible. The department failed to establish on the record that claimant's barrier to participation in the PATH program or alternative activities have been removed.

Good cause is a valid reason for non-compliance with employment and/or self sufficiency related activities that are based on factors that are beyond the control of the non-compliant person. A claimant with good cause must be verified for member adds and recipients. Good cause includes the following:

- The person is working at least 40 hours a week on average and earning at least state minimum wage.
- if the claimant is physically or mentally unfit for the job or activity, or
- if the claimant has a debilitating illness or injury, or
- an immediate family's illness or injury requiring in-home care by the claimant, or
- the department or employer has failed to make reasonable accommodations for the claimant's disability, while the claimant has no child care.
- If the claimant requested transportation services from DHS, the Michigan Works or other employment services provider prior to case closure and reasonably priced transportation was not available to the claimant.
- The employment involves illegal activities, or
- The claimant experiences discrimination.
- There is some unplanned event or factor such as:
 - domestic violence
 - health or safety risks
 - homelessness
 - jail hospitalization or
 - religion
- or the claimant quits to assume the employment comparable on salary and hours
- there is a total commuting time which exceeds 2 or 3 hours per day, including time to and from child care facilities. (BEM, Item 233A, pp. 4-5)

The penalty for noncompliance without good cause is FIP EDG closure. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.
- For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count. BEM, Item 233A, page 6.

The penalty counter also begins April 1, 2007, regardless of the previous number of non-compliance penalties. Begin a sanction period with the first pay period of the month. Penalties are automatically calculated by the entry of non-compliance without good cause in BRIDGES. This applies to active FIP cases including those with a member add who is a WEI JET participant. BEM, Item 233A, p. 6. JET Participants will not be terminated from a JET program without first scheduling a triage meeting with the client to jointly discuss non-compliance and good cause. A triage meeting is to be locally coordinated to notify the MWA case manager of triage meetings including scheduling guidelines. Claimant's can either attend the meeting or participate in a conference call, if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. Claimants must comply with triage requirements within the negative action period. BEM, Item 233A, p. 7. The department is to determine good cause based on the best available information during the triage and prior to the negative action date. Good cause may be verified by information already in the file with DHS or MWA. Good cause must be considered even if the claimant does not attend with particular attention to possible disabilities, including disabilities that have not been diagnosed or identified by the claimant an unmet needs or accommodation. BEM, Item 233A, p. 7. The department is to follow the following procedure for processing the FIP closure:

- Send a DHS-2444 notice of employment and/or self sufficiency related non-compliance within 3 days after learning of the non-compliance.
- Included in the DHS- 2444 is the date of non-compliance, the reason the client was determined to be non-compliant, the penalty that would be imposed, and schedule a triage to be held within the negative action period. BEM, Item 233A, pp. 7-8.

The department is to determine good cause during triage and prior to the negative action effective date. Good cause must be verified and can be based on information already in the file with the DHS or the JET program. The department is to document the good cause determination on the sanction detail screen. If the client does not provide good cause for reason for non-compliance determining good cause based on the best information available. A triage (with claimant and the caseworker) was scheduled with claimant. Claimant did not attend the triage meeting. She did not present records which disqualified her from participating in work first activities. She did not provide good cause for failure to attend Work First (PATH) activities.

This Administrative Law Judge finds that the department has not established by the necessary competent, material and substantial evidence on the record that claimant failed to establish good cause for her failure to turn in weekly activity logs under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Family Independence Program benefits and Food Assistance Program benefits under the circumstances. This Administrative Law Judge finds that the department has not established by a preponderance of the evidence that claimant did not provide good cause for the failure to provide weekly activity logs.

Accordingly, the department's decision is **REVERSED**. The department is ORDERED to reinstate claimant's Family Independence Program and Food Assistance Program benefits if claimant is otherwise eligible for the benefits and pay to claimant any benefits to which she is entitled from the date of proposed sanction or closure of the case.

/s/ _____
Landis

Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 26, 2013

Date Mailed: June 26, 2013

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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

LYL/las

cc:

