

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201336653
Issue No: 1038
Case No: [REDACTED]
Hearing Date: April 23, 2013
County: Wayne County DHS #76

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 received on March 22, 2013. After due notice, a telephone hearing was held on April 23, 2013. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Family Independence Specialist).

ISSUE

Whether the Department properly determined Claimant's eligibility for Family Independence Program (FIP) benefits based on noncompliance with the Partnership Accountability Training Hope (PATH) program requirements?

FINDINGS OF FACT

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

1. Claimant was a FIP recipient and a mandatory PATH participant.
2. On January 2, 2013, the Department scheduled Claimant to attend a PATH appointment for January 14, 2013 at 1:00pm.
3. On January 14, 2013, Claimant failed to attend the required appointment and failed to attend any PATH appointments through March 6, 2013.
4. On March 6, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for March 12, 2013 at 9:00a.m.

5. On March 6, 2013, the Department, following a Triage, found Claimant did not show good cause.
6. The Department mailed Claimant a Notice of Case Action (DHS-1605) on March 6, 2013 which closed Claimant's FIP benefits for 6 months effective April 1, 2013.
7. Claimant submitted a hearing request on March 22, 2013 protesting the closure of her FIP benefits.
8. This is Claimant's second non-compliance with the Jobs, Education and Training (JET) or PATH program.

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 claim for a assistance is 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. BAM 600.

The Family Independence Program (FIP), also referred to as "cash assistance," 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Effective January 1, 2013, as a condition of FIP eligibility, FIP applicants must attend the Partnership Accountability Training Hope (PATH) program (formerly the JET program) and maintain 21 days' attendance. BEM 229. The program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229. In order for their FIP application to be approved, all FIP applicants must complete all of the following: (1) begin the application eligibility period (AEP) by the last date to attend as indicated on the DHS-4785, PATH Appointment Notice; (2) complete PATH AEP requirements; (3) continue to participate in PATH after completion of the 21 day AEP. BEM 229. The Department will deny the FIP application if an applicant does not complete all of the above three components of the AEP. BEM 229.

The Department requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A. The focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. BEM 233A. However, there are consequences for a client who refuses to participate, without good cause. BEM 233A.

Bridges will automatically issue a DHS-4785, PATH Program Appointment Notice, from Bridges at application, member add, or when a client loses a deferral to schedule an appointment for each mandatory PATH participant. The DHS- 4785 will be generated overnight and can be viewed the next day in Correspondence History. BEM 229.

When assigned, clients must engage in and comply with all PATH assignments while the FIP application is pending. PATH engagement is a condition of FIP eligibility. Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. Bridges automatically denies FIP benefits for noncompliance while the application is pending. Bridges will not penalize Food Assistance when a client fails to attend PATH as a condition of eligibility when the noncompliant individual is not active FIP on the date of the noncompliance. Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229.

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. BEM 230A. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A.

For clients who have a child care deferral (child under 6 (six) years of age), adequate child care must be unavailable. BEM 230A. Adequate child care meets all of the following: (1) Appropriate - the care is appropriate to the child's age, disabilities and other conditions; (2) Reasonable distance - the total commuting time to and from work and child care facilities does not exceed three hours per day; (3) Suitable provider - the provider meets applicable state and local standards (Unlicensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements). (4) Affordable - the child care is provided at the rate of payment or reimbursement offered by DHS. BEM 230A.

The Department should refer clients who need assistance in finding a licensed or registered provider to Great Start Connect. BEM 230A. If a provider cannot be located, the client needs to provide verification. BEM 230A. If the client is unable to obtain child care that meets the conditions above within 10 calendar days, the client may be deferred from referral to the work participation program for 90 days or until the child turns age six, or until appropriate care is available, whichever is sooner. BEM 230A.

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the JET Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan

(FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the FSSP; (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview.¹ BEM 233A.

JET participants will not be terminated from a JET program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A.

The department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within 3 (three) days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. BEM 233A.

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. A claim of good cause must be verified and documented for member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to JET. BEM 233A. Good cause should be determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A.

Ineligible caretakers, disqualified aliens, and single parents that cannot find appropriate child care for a child under age six are not required to participate see BEM 230A for required verification. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance,

¹ The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

six months for the second episode of noncompliance and life time closure for the third episode of noncompliance. BEM 233A.

The sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

Here, Claimant does not dispute that she failed to attend any PATH appointments during the 21 day AEP. However, Claimant contends that was unable to attend due to child care issues. She testified that her child care provider, who also happened to be Claimant's mother, agreed to serve as a provider upon the condition that Claimant is eligible for Child Development and Care (CDC) benefits. At some point, according to Claimant, her mother decided that Claimant was not going to be eligible and that CDC benefits would not be forthcoming, so she refused to watch Claimant's children. Claimant offered into evidence a card from her mother which indicated that she was certified for pediatric first aid, asthma care training, adult/child CPR, adult/child AED and infant CPR. Claimant did not call anyone during the AEP and inform them about her child care issues. The Department, on the other hand, contends that Claimant's CDC application was denied and that her provider's CDC eligibility ended on July 7, 2012. The Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that the CDC application was denied and included instructions as to how to obtain CDC benefits.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW 2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Claimant's testimony is not credible. First, the record reveals that Claimant did not timely notify anyone from DHS or from PATH that she had day care issues. During the hearing, Claimant testified that her mother would watch her children on certain days, but not on other days. Claimant was not specific about which days she had day care and which days she did not. Lack of CDC benefits is not a justification for Claimant's failure to attend PATH during the AEP where the record shows Claimant had child care coverage. Claimant's mother (the purported CDC provider) simply refused to watch the children unless she was ensured payment for her services. Based on the competent, material, and substantial evidence presented during

the hearing, this Administrative Law Judge finds that the Department properly closed Claimant's FIP as Claimant was noncompliant without good cause.

Accordingly, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause for failing to attend PAT H during the 21 day AEP. As a result, the Department properly closed Claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly closed Claimant's FIP case for noncompliance with WF/JET requirements and the 6 (six) month sanction is **AFFIRMED**.

IT IS SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 29, 2013

Date Mailed: April 29, 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.

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.

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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

CAP/aca

cc:

