

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201336704
Issue No: 1038
Case No: [REDACTED]
Hearing Date: April 25, 2013
County: St. Clair County DHS

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 13, 2013. After due notice, a telephone hearing was held on April 25, 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. Claimant sought a deferral from PATH for medical reasons.
3. On January 24, 2013, the Medical Review Team (MRT) found that Claimant was not disabled and was work ready with limitations.
4. On February 13, 2013, the Department mailed Claimant a PATH Appointment (DHS-4785) which scheduled him to appear on February 25, 2013.
5. Claimant failed to attend required PATH appointment on February 25, 2013.

6. On March 4, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because he failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for March 13, 2013 at 9:00a.m.
7. On March 13, 2013, Claimant attended Triage and stated that he is disabled and was not able to attend PATH. Claimant was unable to provide proof that his condition had worsened. The Department found Claimant did not show good cause for his noncompliance.
8. The Department mailed Claimant a Notice of Case Action (DHS-1605) on March 4, 2013, which intended to close Claimant's FIP benefits for 3 months effective April 1, 2013 unless Claimant provides good cause at his triage.
9. Claimant submitted a hearing request on March 13, 2013 protesting the closure of his FIP benefits.
10. This is Claimant's first non-compliance with the 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 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.

A Work Eligible Individual (WEI) and non-WEIs¹, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. 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, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A.

Mandatory PATH clients are referred to PATH upon application for FIP, when a client's reason for deferral ends, or a member add is requested. BEM 229. The Department will not send any others to PATH at application, unless a deferred client volunteers to participate. BEM 229. All PATH referrals are sent by Bridges. BEM 229. Bridges will generate an automated PATH referral to the one-stop service centers' One Stop Management Information System (OSMIS), as well as generating an DHS-4785, PATH Appointment Notice, which is sent to the participant, when the specialist does all of the following: (1) completes data collection; (2) eligibility determination/benefit calculation (EDBC) is completed for applicants; (3) EDBC is completed and ongoing benefits are certified for member adds and ongoing active cases; (4) Short Term Family Support (STFS) questions are answered indicating the applicant is not eligible for STFS. BEM 229.

When a client no longer qualifies for a deferral, Bridges sends a task/reminder to the specialist four days before the end of the month the deferral ends. BEM 229. This task/reminder alerts the specialist to run eligibility and certify in order for the PATH referral and the DHS-4785 to be automatically generated by Bridges. BEM 229. Bridges sends the PATH referral and the DHS-4785 the first business day of the calendar month after the deferral ends. BEM 229.

In generating a PATH referral and the DHS-4785, Bridges will allow 6 days for the PATH referral to be processed through Central Print before requiring the client to attend PATH. The one-stop service centers have been advised not to serve clients who appear for AEP or PATH without a system-generated referral as client may not be eligible for PATH services. Bridges will include the date, time and location to appear for their PATH assignment on the automated DHS-4785. 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

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

will result in denial of FIP benefits. Bridges automatically denies FIP benefits for noncompliance while the application is pending. BEM 229.

Bridges will generate an alert when active FIP recipients, including clients losing deferral or member adds do not attend PAT H. See BEM 233A for further policy related to noncompliance with employment related activities. BEM 229.

Federal and state laws require each work eligible individual (WEI) in the FIP and Refugee Assistance Program (RAP) group to participate in the JET Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. BEM 230A. WEIs not referred to the work participation program will participate in other activities to overcome barriers so they may eventually be referred to the work participation program or other employment service provider. BEM 230A. A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230A.

The work participation program is administered by the Workforce Development Agency, State of Michigan (WDASOM) through the Michigan one-stop service centers. BEM 230A. The work participation program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. BEM 230A.

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.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. BEM 230A. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. BEM 230A. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A.

A disability that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. BEM 230A.

Clients are required to engage in self-sufficiency and family strengthening activities even if they are deferred from work participation program or work activities and may be subject to penalties if they do not participate as required. BEM 230A.

Modifications or extra help may include, but are not limited to, the following: (1) reduced hours of required participation; (2) extended education allowances including more than 12 months allowed for vocational education; or (3) extended job search/job readiness time limit. BEM 230A.

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours in which they are engaged, even if they do not meet federal work requirements. BEM 230A.

If the WEI refuses or fails to provide verification of a deferral when required, the Department will refer him or her to the work participation program. BEM 230A. The Department must notify the work participation program service provider immediately by phone or email when a client who was previously referred is granted a temporary deferral. BEM 230A.

A person with short-term incapacity may be deferred for up to 3 (three) months. BEM 230A. A person with a short-term incapacity is a person with a mental or physical illness, limitation, or incapacity expected to last less than 3 (three) months which prevents participation. BEM 230A. **The Department will verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - Work Participation Program, or other written statement from an M.D./D.O. BEM 230A. Then, the Department shall set the medical review date accordingly, but not to exceed three months. BEM 230A.** BEM 230A specifically prohibits the Department from advising with a short-term incapacity to apply for SSI. BEM 230A.

A person with long-term incapacity, or disability, may be deferred. BEM 230A. At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or the work participation program for more than 90 days because of a mental or physical condition, the client should be deferred. BEM 230A. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A. This may include those who have applied for RSDI/SSI. BEM 230A.

Determination of a long term disability is a two step process. BEM 230A. The client must fully cooperate with both steps. BEM 230A. **Step One: Establishment of Disability.** Once a client claims a disability he/she must provide DHS with verification of the disability when requested. BEM 230A. The verification must indicate that the disability will last longer than 90 calendar days. BEM 230A. If the verification is not returned, a disability is not established. BEM 230A. The client will be required to fully

participate in the work participation program as a mandatory participant. BEM 230A. **Step Two: Defining the Disability.** For verified disabilities over 90 days, the specialist must obtain an MRT decision by completing the medical packet. BEM 230A. The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. BEM 230A. If the client does not provide the requested verifications, the case should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence. BEM 230A. Potentially disabled individuals are not sent to the work participation program while waiting for the verification of disability. BEM 230A.

When the Medical Review Team (MRT) decision and information is received, the Department must determine what accommodations the client needs to participate in the work participation program. BEM 230A. The person must pursue employment and/or self-sufficiency-related activities and the Department must follow the procedure for accommodating disabilities. BEM 230A.

The Department must serve individuals who are determined work ready or work ready with limitations by the Medical Review Team when the individual cannot be served by the work participation program. BEM 230A. These clients have a mandatory participation status in Bridges. BEM 230A. The Department must assign self-sufficiency activities up to the medically permissible limit of the individual. BEM 230A. The Department should ask the work participation program to provide any test results or other documentation about the client's limitations at the time the client is referred back to DHS. BEM 230A. **When a client is determined by MRT to be work ready with limitations becomes noncompliant with the work participation program or his/her assigned activities, the Department shall follow the same instructions outlined in BEM 233A with regard to noncompliance.**

An applicant, recipient or a member adds 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 (PRPF C); (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.² BEM 233A.

PATH participants will not be terminated from a PATH program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. BEM

² 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.

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 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.

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, 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, there is no dispute that Claimant failed to attend his scheduled PATH program appointment. However Claimant argues that his medical conditions (lumbar back pain/spinal stenosis, severe osteoarthritis and carpal tunnel syndrome) have worsened since 2012 and that prevents his PATH participation. The Department, on the other hand, contends that the medical documentation (which consists of two DHS-54-E forms)

shows that Claimant's condition has not changed. The Department further argues that the MRT found that Claimant was work eligible with limitations.

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, including the DHS-5 4-E forms. Although Claimant's medical providers believe that Claimant should not participate in PATH activities, both of these forms confirm that Claimant's medical conditions have not changed from 2012 to 2013. In addition, the record reveals that the MRT found, on January 25, 2013, that Claimant was work eligible with limitation. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department properly referred Claimant to PATH. Accordingly, Claimant was required to attend PATH and he has failed to show good cause for his failure to attend.

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 complete his PATH attendance requirements. 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 3 (three) 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.

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

CAP/aca

cc:

