

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201338693
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: May 7, 2013
County: Macomb (12)

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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on May 7, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Family Independence Specialist/Case Manager) and [REDACTED] (P.A.T.H. Liason).

ISSUE

Whether the Department properly closed Claimant's Family Independence Program (FIP) benefits due to Claimant's noncompliance with the Partnership Accountability Training Hope (PATH) program requirements?

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 a FIP recipient and a mandatory PATH participant.
2. On March 8, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she allegedly failed to participate as required in employment and/or self-sufficiency related activities. The DHS-2444 indicated that Claimant was facing a lifetime sanction due to a third instance of noncompliance. The Triage appointment was scheduled for March 14, 2013 at 9:00a.m.
3. On March 14, 2013, Claimant attended Triage and stated that she had good cause for noncompliance due to ongoing medical issues. The Department found Claimant did not show good cause.

4. The Department did not mail Claimant a Notice of Case Action (DHS-1605) which would have informed her that her FIP case would close and that a lifetime FIP penalty would be imposed.
5. Claimant submitted a hearing request on April 2, 2013 protesting the closure of her FIP benefits.

CONCLUSIONS OF LAW

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

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, 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.

Effective January 1, 2013, as a condition of eligibility, FIP applicants must attend the Partnership Accountability Training Hope (PATH) 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 the FIP application to be approved, all FIP applicants must complete each 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-WEI¹, who fails to participate in employment or self-sufficiency-related activities without good cause, 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.

Generally speaking, federal and state laws require each work eligible individual (WEI) in the FIP and Refugee Assistance Program (RAP) group to participate in the PATH Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A. These clients must

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

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.

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.² 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 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

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.

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.

Good cause includes the following: (1) **working full-time at minimum wage** - the person is working at least 40 hours per week on average and earning at least state minimum wage; (2) **physically/mentally unfit** - the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information³; (3) **illness/injury** - the client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client; (4) **failure to accommodate** - the DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability; (5) **child care not provided** - the client requested child care services from DHS, the work participation program, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site; (6) **special child care** - the care is appropriate to the child's age, disabilities and other conditions; (7) **commuting time** - the total commuting time to and from work and the child care facility does not exceed 3 (three) hours per day; (8) **appropriate child care** - the provider meets applicable state and local standards⁴; (9) the child care is provided at the rate of payment or reimbursement offered by DHS; (10) **transportation not provided** - the client requested transportation services from DHS, the work participation program, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client; (11) **illegal** - the employment involves illegal activities; (12) **discrimination** - the client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs; (13) **unplanned event** - credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities⁵; (14) **new employment** - the client quits to assume employment comparable in salary and hours (the new hiring must occur before the quit); (15) **total commuting time** - total commuting time exceeds 2 (two) hours per day, NOT including time to and from child care facilities or three hours per day, including time to and from child care facilities. 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

³ This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A.

⁴ Also, unlicensed providers who are NOT registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

⁵ Unplanned events or factors include, but are not limited to, the following: (1) domestic violence; (2) health or safety risk; (3) religion; (4) homelessness; (5) jail and (6) hospitalization. BEM 233A.

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.

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, the Department contends that Claimant failed to meet her weekly requirements and that she failed to timely provide her required job logs. The Department representatives who attended the hearing testified that Claimant completed 0 hours during week 3 which began February 11, 2013 and had 0 hours for week 4 (beginning February 18, 2013). The Department also indicated that Claimant was required to complete a total of 80 hours for the month of February 2013 but that she completed only 56 hours that month. The Department then added Claimant provided 16 hours of excused absences for that month which left 8 hours unexcused.

The Department's MIS notes indicate that Claimant was required to complete 27 hours of employment-related activity per week. The MIS notes show that Claimant turned in her February 3, 2013 through February 9, 2013 job logs, but the logs were 10 hours short. At this time, Claimant was mailed a re-engagement letter which scheduled an appointment on February 15, 2013. The Department re-engaged Claimant with P.A.T.H. and advised Claimant she had to make up the 10 hours and then submit 29.5 hours of job search on February 19, 2013. The MIS notes then show that Claimant was to start community service placement (CSP) at "[REDACTED]" the week of February 18, 2013 for 4 weeks at 20 hours per week.

The MIS notes dated February 22, 2013 show that Claimant called and advised she could not go to CSP due to back issues (i.e. disc problem and could not move arms). Claimant requested a CSP site where she could sit entirely, but her request was denied. Six days later (February 28, 2013), Claimant called to report she completed 1 day of CSP but was unable to return due to continued back problems and now she had a cyst. Claimant was instructed to turn in a medical note by March 4, 2013. Claimant reportedly indicated that she was unable to get out of bed in order to turn in the note. The MIS notes also indicate that Claimant presented some Emergency Room records on March 4, 2013 but that the ER records did not provide any dates for time off. Claimant indicated she could bring additional doctor notes excusing her from participation. Claimant was permitted until March 5, 2013 at 10:00am to bring in the additional notes. Claimant, according to the MIS notes, was unable to provide the requisite documentation by March 5th.

Claimant does not dispute the Department's position regarding dates and hours, but she contends that she had medical reasons for her noncompliance. Medical records were

included which excused Claimant from CSP from February 22, 2013 through February 28, 2013. There were no other medical records that covered any other time periods.

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 NW2d 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 medical records. The Administrative Law Judge agrees that Claimant is excused for February 22, 2013 though February 28, 2013. But the record here shows that Claimant has no documentation that excused her 10 hour shortage on her job logs from the February 3, 2013 through February 9, 2013 time period. Claimant has not shown evidence to cover the time period at issue. Based on the competent, material, and substantial evidence presented during the hearing, 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 her job-related activities. As a result, the Department properly closed Claimant's FIP case for non-compliance.

Although the Department contends that this is Claimant's third noncompliance with the JET/P.A.T.H. program, the Department did not provide any evidence to show prior instances of noncompliance. The MIS note and Notice of Noncompliance which conclude that this is Claimant's third instance of noncompliance are insufficient. Accordingly, the Department has not provided sufficient evidence in the record to support a lifetime FIP penalty.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department is **AFFIRMED-IN-PART** and **REVERSED-IN-PART**.

The Department properly closed Claimant's FIP case for noncompliance with WF/JET requirements because Claimant was noncompliant and failed to show good cause. However, the Department has failed to provide sufficient evidence to show that this is Claimant's third instance of noncompliance which would justify the imposition of a lifetime FIP sanction.

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

- Initiate a redetermination of Claimant's history of noncompliance with J.E.T. or P.A.T.H. program activities.
- If, following the redetermination, the Department confirms that Claimant has two prior instances of noncompliance, the Department may consider the instant matter a third noncompliance which would support a lifetime FIP sanction.

IT IS SO ORDERED.

/s/_____

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

Date Signed: May 13, 2013

Date Mailed: May 14, 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

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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:

