

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: [REDACTED]
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: May 15, 2013
County: Kent

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 15, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Case Manager), [REDACTED] (Family Independence Manager) and [REDACTED] (Case Manager at Ross-Michigan Works).

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. Claimant, as part of her mandatory PATH participation, was required to complete 40 hours per week of activity which included community service and job search.
3. On March 8, 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. The Triage appointment was scheduled for March 20, 2013 at 2:00p.m.

4. On March 20, 2013, Claimant did not attend Triage. The Department found Claimant did not show good cause.
5. The Department mailed Claimant a Notice of Case Action (DHS-1605) on March 8, 2013 which imposed a 6 month penalty and closed Claimant's FIP case effective April 1, 2013.
6. Claimant submitted a hearing request on April 1, 2013 protesting the closure of her FIP benefits.
7. This is Claimant's second non-compliance with the PATH program.

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.

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

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.

When assigned, clients must engage in and comply with **all** PATH assignments while the FIP application is pending. BEM 229. PATH engagement is a condition of FIP eligibility. BEM 229. Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. BEM 229. Bridges automatically denies FIP benefits for noncompliance while the application is pending. BEM 229. 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. BEM 229. Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229.

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 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. BEM 230A. A client may disclose a disability at any time. BEM 230A. 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. 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.

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.

Noncompliance also can be found if an applicant, recipient or a member add, without good cause, does any of the following: (1) states orally or in writing a definite intent not to comply with program requirements; (2) threatens, physically abuses or otherwise behaves disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity; or (3) refuses employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. 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.

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.

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 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 was a no call, no show for required appointments on the following days in February 2013: 15, 18, 21, 22 and 25. The Department also submits that she attended community service but did not provide job search on February 20. Finally, the Department indicates that Claimant failed to attend a re-engagement appointment on March 1, 2013. Claimant does not dispute that she failed to attend any of the above appointments or that she was noncompliant as alleged. However, Claimant provides multiple reasons for her noncompliance: (1) she has good cause due to ongoing psychological problems (anxiety and panic attacks); (2) she was moving and (3) the mail carrier stopped delivering her mail. Claimant submitted a letter

from a Physician's Assistant from the [REDACTED] which stated that Claimant began treatment at the clinic in April 2012 for anxiety and has had success with medication. The letter indicated Claimant was treated on March 18, 2013 because she stopped taking her medication, but that she may now resume work activities.

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 letter from [REDACTED]. The letter is insufficient to show good cause. It is a general letter which does not sufficiently explain what happened on February 15, 18, 21, 22 and 25. Nor does it explain March 1. If she had done so, the Department could have forwarded her to the Medical Review Team (MRT) for a possible deferral. In addition, the Administrative Law Judge does not find Claimant's excuses for failing to call or show up for any of the appointments to be credible. There were multiple appointments but not one phone call. With regard to the address issues, Claimant should have notified the Department much earlier of these problems. Policy requires her to timely report changes. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that Claimant has failed to show good cause for failing to complete her attendance and job search activities. 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: May 20, 2013

Date Mailed: May 21, 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:

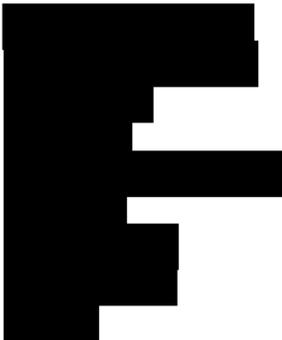
- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical 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:

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