

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

IN THE MATTER OF:



Reg. No.: 201341270
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: May 16, 2013
County: Allegan

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 16, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (PATH Case Manager) and [REDACTED] (Family Independence Manager).

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 applied for FIP benefits on April 24, 2013.
2. On or about March 8, 2013, the Medical Review Team (MRT) determined that Claimant was work ready with limitations.
3. On March 8, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785) which scheduled him to attend a PATH appointment on March 20, 2013 at 1:00p.m.

4. On April 5, 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. The Triage appointment was scheduled for April 11, 2013 at 1:00p.m.
5. On April 11, 2013, Claimant attended Triage and stated that he had medical conditions which prevented his participation in the PATH program. Claimant did not provide any additional medical documentation. The Department found Claimant did not show good cause.
6. The Department mailed Claimant a Notice of Case Action (DHS-1605) on April 5, 2013 which imposed a 6 month penalty and closed Claimant's FIP case effective May 1, 2013.
7. Claimant submitted a hearing request on April 11, 2013 protesting the closure of his FIP benefits.
8. 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.

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 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.

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

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

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.

Section 504 of the American Disability Act defines a “disability” as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc. BEM 230A.

When a client requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements. 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.

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.

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 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 by a WEI while the application is pending results in group ineligibility. BEM 233A. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending, must have benefits delayed. BEM 233A. If a WEI applicant refuses suitable employment without good cause while the FIP application is pending (or up to 30 days before the FIP application date), approve FIP benefits no earlier than the pay period following the pay period containing the 30th day after the refusal of employment. A non-WEI who does not complete the FAST within 30 days and the application is still pending is denied FIP. A good cause determination is not required for applicants who are noncompliant prior to FIP case opening. If a WEI member add refuses suitable employment without good cause while the FIP member add is pending, close the FIP EDG for the minimum number of penalty months. BEM 233A.

Refusing suitable employment means doing any of the following: (1) voluntarily reducing hours or otherwise reducing earnings; (2) quitting a job except if the work participation program verifies the client changed jobs or reduced hours in order to participate in a work participation program approved education and training program.; (3) firing for misconduct or absenteeism (not for incompetence)³; (4) refusing a bona fide offer of

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.

³ Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or

employment⁴ or additional hours up to 40 hours per week. BEM 233A. Exception: Meeting participation requirements is not good cause for refusing suitable employment, unless the employment would interfere with approved education and training. BEM 233A. An applicant or member add who refused employment more than 30 days prior to the date of application or date of member add may not be penalized. 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.

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

alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual’s work. BEM 233A.

⁴ A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent. BEM 233A.

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 non-compliant with the PATH program when he: (1) failed to submit a job log for the week of March 24, 2013; (2) failed to achieve 40 hours of (with at least 10 contacts) job search; (3) left job club early on April 3, 2013 and April 4, 2013; and (4) failed to provide medical documentation excusing him from the above listed activities. Claimant, on the other hand, contends that he has a medical condition and that his physician has directed him not to work due to his condition.

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. Claimant does not challenge the Department's factual assertions and Claimant does not argue that he was compliant. Claimant, however, contends that he had good cause. The policy specifically provides that if the MRT finds Claimant is work-ready with limitations, he must participate. See BEM 230A at page 12 which provides in pertinent part: "DHS must serve recipients, who are determined work ready with limitations by MRT, when the recipient cannot be served by PATH. These recipients are considered mandatory participants and must engage in activities monitored by the department." Here, Claimant failed to provide medical documentation that he has a new medical condition or new medical evidence following the MRT assessment. See BEM 230A at pages 12 and 13. 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 his mandatory 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 PATH 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

2013-41270/CAP

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:

