

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201342352

Issue No: 1038

Case No: [REDACTED]

Hearing Date: May 22, 2013

Genesee County DHS (02)

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 by the Department of Human Services (department) on April 15, 2013. After due notice, a telephone hearing was held on May 22, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a triage coordinator with the department's Genesee County McCree District office, and [REDACTED], a coordinator with the Michigan Works Partnership, Accountability, Training, Hope (PATH) program.

ISSUE

Whether the department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits based on Claimant's 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. At all times relevant to this hearing, Claimant was a recipient of FIP benefits and, as a recipient of FIP benefits, Claimant was a mandatory PATH participant, unless otherwise deferred from the program.
2. On February 22, 2013, Claimant submitted to the department a completed Medical Needs – Work Participation Program (DHS-54E) form indicating that Claimant had been diagnosed with bipolar disorder and was unable to work at any job or occupation from January 31, 2013 through March 28, 2013. The form indicated that Claimant was last seen by physician [REDACTED], M.D., on February 18, 2013; however, the form

was signed by Dr. [REDACTED] and dated January 17, 2013. The form also initially indicated that Claimant had physical limitations but this information was crossed out. (Department Exhibits 1, 6)

3. On February 22, 2013, the department contacted Dr. [REDACTED]'s office to verify the accuracy of the completed Medical Needs – Work Participation Program (DHS-54E) form submitted by Claimant and was advised by Dr. [REDACTED]'s staff member, [REDACTED], that Dr. [REDACTED]'s office did not complete sections A, B, C, and H of the form. (Department Exhibit 1)
4. On February 27, 2013, the department mailed Claimant a Notice of Noncompliance (DHS 2444) and a Notice of Case Action for her failure to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant's submittal of fraudulent medical documentation. The Notices indicated that, unless good cause was established, effective April 1, 2013, her FIP case would be closed for a three-month sanction as this was Claimant's first non-compliance. The Notice of Noncompliance also scheduled a triage appointment for Claimant on March 6, 2013 at 9:00 a.m. (Department Exhibits 1, 2, 3)
5. Claimant attended the March 6, 2013 triage appointment, at which time the department concluded that Claimant did not establish good cause for her submittal of fraudulent medical documentation. (Department Exhibit 1)
6. Effective April 1, 2013, Claimant's FIP case was closed and subject to a three-month sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibit 3)
7. On April 15, 2013, Claimant submitted a hearing request protesting the department's closure of her FIP case and imposition of a three-month sanction. (Request for Hearing)
8. At the May 22, 2013 hearing, Claimant provided the department with a written statement from Dr. [REDACTED] dated May 21, 2013, wherein Dr. [REDACTED] indicated that his previous employee, [REDACTED], completed section H of the Medical Needs – Work Participation Program (DHS-54E) form that was signed by Dr. [REDACTED] on behalf of Claimant. (Department Exhibit 6, Claimant Exhibit A)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code 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 of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1.

The Family Independence Program (FIP) 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 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).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by the department when the client applies for cash assistance. Partnership, Accountability, Training, Hope (PATH) program requirements, education and training opportunities, and assessments are covered by the PATH case manager when a mandatory PATH participant is referred at application. BEM 229.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Partnership, Accountability, Training, Hope (PATH) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. PATH is a program administered by the Michigan Department of Licensing and Regulatory Affairs (LARA) through the Michigan Works Agencies (MWAs). The PATH program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- . Failing or refusing to:

- .. Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
- .. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
- .. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
- .. Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP).
- .. Provide legitimate documentation of work participation.
- .. Appear for a scheduled appointment or meeting related to assigned activities.
- .. Participate in employment and/or self-sufficiency-related activities.
- .. Accept a job referral.
- .. Complete a job application.
- .. Appear for a job interview (see the exception below).
- . Stating orally or in writing a definite intent not to comply with program requirements.
- . Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- . Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. 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. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled

triage meeting, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period.

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 PATH. 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.

Good cause includes the following:

- The person is working at least 40 hours per week on average and earning at least state minimum wage.
- The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. 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.
- The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.
- 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.
- The client requested child care services from DHS, PATH, 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.

- The care is appropriate to the child's age, disabilities and other conditions.
- The total commuting time to and from work and the child care facility does not exceed three hours per day.
- The provider meets applicable state and local standards. 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.
- The child care is provided at the rate of payment or reimbursement offered by DHS.
- The client requested transportation services from DHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.
- The employment involves illegal activities.
- The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.
- Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:
 - Domestic violence.
 - Health or safety risk.
 - Religion.
 - Homelessness.
 - Jail.
 - Hospitalization.
- The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.
- Total commuting time exceeds: 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.

The penalty for noncompliance without good cause is FIP closure. Effective October 1, 2011, the following minimum penalties apply:

- For the first occurrence on the FIP case, close the FIP for not less than three calendar months.

- . For the second occurrence on the FIP case, close the FIP for not less than six calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for a lifetime sanction. BEM 233A.

Department policy further indicates that the individual penalty counter begins April 1, 2007. BEM 233A. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

In this case, Claimant was required to participate in the PATH program as a condition of Claimant's receipt of FIP benefits. On February 27, 2013, the department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant's submittal of a completed Medical Needs – Work Participation Program (DHS-54E) form that was signed by her physician but that had not been completed by individuals other than him. And, because the department ultimately determined that Claimant did not provide good cause during her triage appointment for her submittal of an improperly completed DHS-54E form, the department closed Claimant's FIP case and imposed a three-month sanction due to this being Claimant's first noncompliance.

At the May 22, 2013 hearing, Claimant denied that she submitted fraudulent medical documentation and testified that she did not herself complete any portion or section of the Medical Needs – Work Participation Program (DHS-54E) form. In support of her testimony, Claimant submitted a written statement from Dr. [REDACTED] dated May 21, 2013, wherein Dr. [REDACTED] indicated that his previous employee, [REDACTED], completed section H of the Medical Needs – Work Participation Program (DHS-54E) form that was signed by Dr. [REDACTED] on behalf of Claimant. (Claimant Exhibit A). Claimant further testified that her community mental health worker, [REDACTED], completed sections A, B, and C of the Medical Needs – Work Participation Program (DHS-54E) form. Claimant further testified that while Ms. [REDACTED] was unable to attend the hearing, Claimant could obtain a written statement from her and provide it to the Michigan Administrative Hearing System by the close of business on May 23, 2013, which this Administrative Law Judge agreed to allow Claimant to do before closing the record in this case. The subsequently submitted statement by [REDACTED], LLMSW, dated May 23, 2013, indicated the following:

I am writing to contest to the fact that on the form Medical Needs – Work Participation Program, which is DHS-54-E. In section A, I was the one that wrote Bipolar I Disorder and in section C, I was the one that marked limitations, but then scribbled it out. I am sorry for any confusion that this may have caused and contest to the best of my ability that I was the one that did both of these items on the paperwork. (Claimant Exhibit B)

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). Moreover, 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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the May 22, 2013 hearing, Claimant's community mental health worker, [REDACTED], did *not* acknowledge having completed section B of the Medical Needs – Work Participation Program (DHS-54E) form, contrary to Claimant's testimony. Regardless, this Administrative Law Judge finds that the instructions on the Medical Needs – Work Participation Program (DHS-54E) form clearly specify that the form "must be completed by an MD/DO/FLP/Ph.D." – and, based on Claimant's testimony, and the statements from Dr. [REDACTED] and Ms. [REDACTED], it is clear that the *only* portion of the form that was completed by an MD/DO/FLP/Ph.D was the signature box wherein Dr. [REDACTED] signed his name.

Consequently, while the Medical Needs – Work Participation Program (DHS-54E) form submitted by Claimant to the department on February 22, 2013 may not have been fraudulent, there is no dispute that it was not completed as required by an MD/DO/FLP/Ph.D. Therefore, the department properly closed and imposed a three-month sanction on Claimant's FIP case effective April 1, 2013 for her noncompliance with the PATH program requirements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed and imposed a three-month sanction on Claimant's FIP case effective April 1, 2013 for her noncompliance with the PATH program requirements. The department's actions are therefore **UPHELD**.

It is SO ORDERED.

/s/

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 24, 2013

Date Mailed: May 28, 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 this Decision and Order to Circuit Court within 30 days of the receipt 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 errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

