

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

IN THE MATTER OF:



Reg. No.: 201345088
Issue No.: 1038, 3029
Case No.: [REDACTED]
Hearing Date: June 5, 2013
County: Washtenaw

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 June 5, 2013. Claimant appeared and testified.

ISSUE

Did the Department properly sanction Claimant's Family Independence Program (FIP) for failure to participate in employment and/or self-sufficiency related activities?

Did the Department properly sanction Claimant's Food Assistance Program (FAP) for failure to participate in employment and/or self-sufficiency related activities?

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 an ongoing recipient of Family Independence Program (FIP) benefits. Claimant was temporarily deferred from participant in Partnership, Accountability, Training, Hope (PATH).
- (2) On April 1, 2013, Claimant was sent a Partnership, Accountability, Training, Hope (PATH) Appointment Notice (DHS-4785 form) because her temporary deferral had ended. The notice stated that Claimant was required to attend Partnership, Accountability, Training, Hope (PATH) beginning April 8, 2013.
- (3) On April 8, 2013, Claimant did not attend PATH.
- (4) On April 19, 2013, Claimant was sent a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting for April 25, 2013. Claimant was also sent a Notice of Case Action (DHS-1605) which stated her Family

Independence Program (FIP) and Food Assistance Program (FAP) would be sanctioned beginning May 1, 2013.

- (5) On April 25, 2013, Claimant attended the scheduled triage meeting. Claimant presented a medical note dated April 17, 2013 which stated she was off work until June 1, 2013. (Page 18, Exhibit 5) Claimant was given a Medical Needs – PATH Form (DHS 54E) to be filled out by her Doctor and returned before April 30, 2013.
- (6) On April 30, 2013, the Medical Need – PATH Form (DHS 54E) was returned. (Pages 19 & 20, Exhibit 6) It was signed by the same Doctor who issued the April 17, 2013 note. On the Medical Need – PATH Form (DHS 54E) the Doctor indicated that Claimant was able to work with restrictions. The Department determined there was no good cause for Claimant's failure to attend PATH.
- (7) On May 2, 2013, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) 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 1997 AACRS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3001-3015.

Claimant does not dispute that she did not attend PATH. Claimant asserts she relied on the note she brought to triage as good cause because it stated she was off work until June 1, 2013. Neither does Claimant dispute being given the Medical Need – PATH Form (DHS 54E) at triage for the Doctor to fill out. Claimant testified that she assumed the Doctor would put the same thing on the 54E as on the note.

Department of Human Services Bridges Eligibility Manual (BEM) 230A (2013) page 9 provides:

Short-Term Incapacity

Persons with a mental or physical illness, limitation, or incapacity expected to last less than three months and which prevents participation may be deferred (from PATH) for up to three months.

Verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - PATH, or other written statement from an M.D./D.O. Set the medical review date accordingly, but not to exceed three months.

Department of Human Services Bridges Eligibility Manual (BEM) 233A (2013) page 9 provides:

GOOD CAUSE FOR NONCOMPLIANCE

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. Document the good cause determination in Bridges and the FSSP under the Participation and Compliance tab.

Good cause includes the following:

Client Unfit 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.

Illness or 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.

TRIAGE

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Locally coordinate a process to notify PATH case manager of triage day schedule, including scheduling guidelines.

Determine good cause 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 PATH.

In this case Claimant presented a medical document, signed by a Dr. which stated she was off work until June 1, 2013. BEM 230A, cited above, states that a written statement from an M.D./D.O. is sufficient verification of a short term incapacity used as the basis of a deferral from PATH. BEM 233A, cited above, directs that good cause be determined on the best information available during the triage and prior to the negative action date. The Department had sufficient verification to establish good cause at the triage and there was no necessity to obtain a subsequent verification in a different form.

The subsequent request for verification in a different form was not unreasonable or forbidden by Department policy. Surprisingly, the subsequent verification, from the same Doctor, based on the same assessment of Claimant and her medical records, contradicts the first sufficient verification.

In this case, the separate parties assert that the medical evidence supports their side. While the resolution of this case derives from the conflicting opinions, the resolution does not involve finding one opinion to be correct and the other incorrect. The contradictory medical opinions in this case are not from two different Doctors or from the same Doctor based on different evaluations. If the different opinions from the same Doctor based on different evaluations, the most recent opinion would be given the most evidentiary weight. If the record contained the contradicting opinions of two different Doctors based on the same medical information the finder of fact would be required to determine which of the two opinions should be given the most evidentiary weight. That would result in resolution of the case based on an evidentiary superiority of one opinion over the other.

In this case the contradicting medical opinions are from the same Doctor. The contradicting opinions are based on the same assessment of Claimant and her medical records. While both opinions cannot be correct, absent additional evidence from the Doctor that definitively resolves the contradiction neither opinion can be determined to be correct or reliable. This deficiency is not attributable to either Claimant or the Department. The contradictory opinions and evidentiary deficiency they create derive from the Doctor.

The Department has the initial burden of going forward with sufficient evidence to show that their action is correct in accordance with law and policy. Meeting that burden requires submitting: evidence showing that Claimant did not present verification or documentation of good cause; or evidence rebutting Claimant's verification and documentation of good cause.

As explained above, neither of the contradictory opinions can be determined as correct or reliable. Stated another way, the evidence presented by the Department neither proves that Claimant was able to participate nor that she was not able to participate. In this specific case, upholding the Department would require evidence showing that the Doctor's opinion Claimant submitted at triage a DID NOT show she had good cause for not attending PATH. The additional medical opinion submitted by the Department does not meet that requirement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not properly sanction Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) for failure to participate in employment and/or self-sufficiency related activities.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that Claimants Family Independence Program (FIP) and Food Assistance Program (FAP) be reinstated and any benefits Claimant was otherwise eligible for but did not receive because of this incorrect action be supplemented to her.

/s/
Gary F. Heisler
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 6/14/13

Date Mailed: 6/14/13

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.

GFH/tb

cc:

