

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201333885
Issue No: 1038
Case No: [REDACTED]
Hearing Date: July 11, 2013
Kalamazoo County DHS

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 March 8, 2013. After due notice, a telephone hearing was held on July 11, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a case manager and triage specialist, and [REDACTED], a case manager with the Partnership, Accountability, Training, Hope (PATH) program, both with the department's Kalamazoo County office.

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 November 30, 2012, Claimant completed and signed a redetermination (DHS-1010) form for purposes of establishing her eligibility for FIP benefits and for Food Assistance Program (FAP) and Medical Assistance (MA) benefits. Therein, Claimant indicated that she was employed full-time, working 42 hours per week. Claimant did not report in the redetermination that she was pregnant. In signing the

redetermination, Claimant certified with her signature, under penalty of perjury, that the redetermination had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. (Department Exhibit 9)

3. On January 2, 2013, Claimant completed an assistance application (DHS1171) for FIP, FAP, and MA benefits. Therein, Claimant failed to respond to the question of whether she was or had been pregnant within the last three months. In signing the application, Claimant certified with her signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. (Department Exhibit 8)
4. On February 8, 2013, following the department's verification that Claimant was laid off from her employment, the department mailed Claimant a PATH Appointment Notice (DHS-4785), notifying her of her required attendance at the PATH Program on February 19, 2013 at 8:45 a.m.. The Notice further advised Claimant that her failure to attend the work participation program will result in the denial of benefits. The Notice further advised Claimant that if she was unable to keep this appointment, she must call and reschedule the appointment before the scheduled appointment date.
5. Claimant did not attend her February 19, 2013 PATH appointment but did leave a voicemail with her caseworker indicating that she was unable to attend her appointment due to a disability and that she had applied for SSI disability benefits.
6. On February 19, 2013, the department mailed Claimant a Medical Needs – JET form (DHS-54-D) to be completed by an MD/DO/FLP/Ph.D. However, the form did not include a deadline by which Claimant must return the completed form. (Department Exhibit 1)
7. On February 26, 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 failure to attend her February 19, 2013 PATH appointment. 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 7, 2013 at 9:00 a.m. (Department Exhibits 6, 7)
8. Claimant neither attended nor called in advance to reschedule her March 7, 2013 triage appointment.

9. 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 Exhibits 6, 7)
10. On March 8, 2013, Claimant submitted a hearing request protesting the department's closure of her FIP case and the imposition of a three-month sanction. In support of her Request for Hearing, Claimant submitted a medical statement titled "[REDACTED] Order Requisition" dated March 7, 2013 for Claimant indicating a primary diagnosis of dysfunctional uterine bleeding with reference to a "complete spontaneous abortion with other specified complications." (Request for Hearing)
11. On or about March 8, 2013, Claimant's triage specialist contacted Claimant at which time Claimant reported having had a miscarriage at the end of January 2013 and further reported that she was receiving counseling from [REDACTED].
12. On March 11, 2013, the department mailed Claimant two new Medical Needs – JET forms (DHS-54-D) to be completed by [REDACTED] and by [REDACTED]. The department also mailed Claimant a Medical Examination Report (DHS-49) to be completed by [REDACTED]. None of the three forms included a deadline by which the completed forms must be returned to the department. (Department Exhibits 2, 3, 4)
13. At no time prior to May 17, 2013 did Claimant provide the department with the completed Medical Needs – JET forms or the completed Medical Examination Report or otherwise provide the department with any medical documentation to support that she had a miscarriage at the end of January 2013.
14. On May 17, 2013, Claimant submitted to the department a statement from [REDACTED], which had been printed out on May 17, 2013, which indicated that Claimant was admitted on December 10, 2012 with a diagnosis of "abortion, spontaneous complete." (Department Exhibit 10)
15. On May 17, 2013, Claimant's triage specialist contacted [REDACTED] and obtained confirmation that Claimant had a miscarriage on December 10, 2012.

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, among other things, the following:

- 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 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 26, 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 failure to attend her February 19, 2013 PATH appointment. And, because the department ultimately determined that Claimant did not provide good cause for her failure to attend her February 19, 2013 PATH appointment, the department closed Claimant's FIP case and imposed a three-month sanction due to this being Claimant's first noncompliance.

At the July 11, 2013 hearing, the department's representative and Claimant's case manager and triage specialist, [REDACTED], testified that, despite Claimant's repeated failure to submit any medical documentation to excuse her from participating in the PATH program until May 17, 2013, [REDACTED] would have still retroactively approved Claimant for two months of post-partum recovery following her December 10, 2012 miscarriage pursuant to BEM 230A – however, even doing so would not have excused Claimant from attending her February 19, 2013 PATH appointment because any such two-month post-partum recovery deferral would have expired on February 10, 2013.

Also at the hearing, Claimant strongly disagreed that she hadn't provided the department with any medical documentation to excuse her from participating in the PATH program until May 17, 2013. However, the statement that Claimant submitted from [REDACTED] had clearly been printed out on May 17, 2013 and it is undisputed that this is the only medical documentation submitted by Claimant which indicated that Claimant had a miscarriage on December 10, 2012. Moreover, Claimant acknowledged that she failed to mention any pregnancy within the last three months in either her November 30, 2012 redetermination paperwork or her January 13, 2013 assistance application. Likewise, while Claimant testified that her recent June 12, 2013 approval for receipt of SSI disability benefits should support that she was disabled during the time period in question and unable to participate in the PATH program, this too is not supported by the record evidence – specifically, Claimant's November 30, 2012 redetermination wherein she indicated that she was employed full-time, working 42 hours per week.

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 July 11, 2013 hearing, because Claimant failed to timely provide the department with any medical documentation to demonstrate good cause for her failure to attend her February 19, 2013 PATH appointment, 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: July 15, 2013

Date Mailed: July 16, 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;

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- 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:

