

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

IN THE MATTER OF:

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██████████
████████████████████

Reg. No. 2013 31998
REH/RECON 2013 56942
Issue No. 1038
Case No. ██████████
Hearing Date: August 5, 2013
County: Wayne County DHS (98)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

DECISION AFTER REHEARING

This matter is before the undersigned Administrative Law Judge upon Claimant's request for a hearing made pursuant to MCL 400.9 and MCL 400.37, and Mich Admin Code Rule 400.919 upon Order Granting Rehearing of a Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of a hearing conducted on May 13, 2013, mailed on May 21, 2013, in the above captioned matter. In addition the Order Granting Rehearing ordered that the case to be reheard be scheduled together with Registration Number 2013 31998. After due notice, a telephone hearing was held on August 5, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ FIM, ██████████ Case Manager, and ██████████ PATH Coordinator.

This matter arises out of a Request for Rehearing granted on July 9, 2013 regarding a hearing held on May 13, 2013 for Registration No 2013 41027 now Registration No. 2013 49256.

An Order for Continuance was issued in Registration No 2013 31998 on July 2, 2013 for a hearing conducted on June 26, 2013 which was begun but not completed.

ISSUE

Whether the Department properly closed Claimant's case for Family Independence Program (FIP) benefits based on Claimant's failure to participate in employment-related activities without good cause.

Whether the Department properly reduced Claimant's Food Assistance Program (FAP) benefits based on Claimant's failure to participate in employment-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 FIP benefits.
2. The Claimant was referred to the Medical Review Team (MRT) to determine whether he was entitled to a deferral from participation in FIP employment-related activities due to back problems.
3. On January 1, 2013, MRT found Claimant not disabled and work ready with limitations and denied the Claimant's request for a JET deferral.
4. On February 19, 2013 the Department notified Claimant of the MRT decision and referred him to a work participation program on January 30, 2012 with an appointment to attend on February 12, 2013.
5. Claimant did not attend the work participation program.
6. On February 19, 2013, the Department sent Claimant a Notice of Noncompliance scheduling a triage on February 28, 2013.
7. Claimant did not participate in the triage.
8. The Department held the triage and found that Claimant had failed to comply with employment-related activities without good cause.
9. On February 19, 2013, the Department sent Claimant a Notice of Case Action closing Claimant's FIP case, effective April 1, 2013, based on Claimant's failure to participate in employment-related activities without good cause and removed the Claimant from his FAP group beginning April 1, 2013.
10. As a result of the February 19, 2013 triage, the Department imposed a second sanction for Claimant's failure to comply with employment-related obligations which closed the Claimant's FIP case for 6 months effective April 1, 2013.
11. On February 26, 2012, Claimant filed a request for a hearing disputing the Department's action.

12. While the Claimant's request for hearing was pending, on March 1, 2013 the Department sent a second Notice to attend the PATH program as of March 12, 2013 while the Claimant's request for hearing dated February 26, 2013 was pending.
13. The Department also sent a new Medical Verification Checklist on March 1, 2013.
14. The Claimant did not attend the PATH Orientation on March 12, 2013.
15. On April 1, 2013 the Claimant was sent a second Notice of Non-Compliance which scheduled a triage for April 11, 2013. A triage was held and the Claimant participated by phone and the Department found no good cause for Claimant's non participation in assigned work participation requirements.
16. The Department issued a second Notice of Case Action closing the Claimant's FIP case effective May 1, 2013 and imposed a third sanction for lifetime closure as a result of the triage held on April 11, 2013 and reduced Claimant's FAP benefits and removed the Claimant from his FAP group effective May 1, 2013 through October 31, 2013.
17. The Claimant requested a hearing on February 26, 2013 protesting the imposition of a finding of no good cause and imposition of a second sanction for noncompliance with work-related activities.
18. On April 9, 2013 Claimant filed a request for hearing regarding the finding of noncompliance without good cause resulting from a triage held on April 11, 2013 imposing a third sanction.

CONCLUSIONS OF LAW

Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 Mich Admin Code, R

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400.3101 through R 400.3131. 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 Mich Admin Code, R 400.3001 through R 400.3015.

FIP Benefits

In order to increase their employability and obtain employment, work eligible individuals (WEI) seeking FIP are required to participate in the PATH Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A; BEM 233A. In this case, Claimant was a recipient of FIP benefits who sought a medical deferral from participating in employment-related activities. After the Medical Review Team found the Claimant work ready with limitations the Department issued an Appointment Notice scheduling the Claimant to attend the PATH Program on January 30, 2013. The Claimant did not attend the appointment on February 12, 2013, and a notice of non compliance was issued on February 19, 2013 scheduling a triage on February 28, 2013. The Claimant did not attend the triage, but did receive notice of the scheduled triage. The Department conducted a triage and found the Claimant did not present good cause for failure to attend PATH orientation.

The Claimant advised at the hearing that the reason he did not attend the triage was that he was scheduled to have surgery on [REDACTED] and was at a pain clinic appointment that day and could not attend the triage. The Claimant did not call the Department in advance of the triage date or on the date of the triage and request that the triage be rescheduled or request a phone triage. The Claimant also did not provide any documents indicating that he was at the pain clinic on the date of the triage. Based upon this evidence it is determined that the Department, based upon the record before it of the Claimant's non-attendance at PATH Orientation, and failure to appear at the triage without advising the Department that he could not attend or request some other accommodation, correctly applied and followed Department policy when it found no good cause for failure to participate in work assigned activities and closed the Claimant's FIP case and imposed a six month second sanction and removed Claimant from his FAP group for a one month period [REDACTED] [REDACTED] BEM 233B

As regards the second appointment notice sent by the Department on March 1, 2013, while the Claimant's request for hearing was pending, it is determined that the Department incorrectly issued a third sanction. At the hearing the Department advised that because the Claimant's hearing request was timely the Claimant's FIP case was reinstated pending the hearing and thus another notice of appointment was appropriate. While the hearing request was pending the Department applicable policy provides:

While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, reinstate program benefits to the former level for a hearing request filed because of a negative action. BAM 600 pp.18 (2/1/13).

The Department based upon the benefit reinstatement believed that it was authorized to continue to assign a Claimant to the PATH program orientation while the hearing request was pending. However, based upon the finding in this Decision that the Claimant was correctly found non-compliant with respect to the first triage (February 28, 2013) the Department's application of a third sanction, arising out of the March 1, 2013 PATH Appointment and triage held on April 11, 2013 is null and void as the Claimant based on the determination in this Decision is determined to be already under sanction based upon the results of the triage held February 28, 2013 and thus could not be assigned to attend PATH during a period of sanction. Therefore the Department's action including the issuance of a Notice of Non Compliance (4/1/13), conducting a triage on April 11, 2013 and issuance of a Notice of Case action on April 1, 2013 closing the Claimant's FIP case effective May 1, 2013 and imposing a 3rd sanction (lifetime) and removing the Claimant from his FAP group for a 6 month period (5/1/13 - 10/31/13) was incorrect.

Failing or refusing to attend or participate in the work participation program without good cause constitutes a noncompliance with employment or self-sufficiency related activities. BEM 233A. However, work participants will not be terminated from a work participation program without the Department first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. Good cause is a valid reason for noncompliance which is beyond the control of the noncompliant person and 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. Based upon the record presented it is determined that the Department correctly followed and applied Department policy in its determination that the Claimant was in noncompliance without good cause and correctly imposed a second sanction for the Claimant's non-participation in the PATH program and failure to attend when assigned.

FIP CLOSURE – NOTICE OF CASE ACTION 2/19/13 (6 MONTH SANCTION)

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department

properly closed Claimant's FIP case as a result of the triage held February 28, 2013.
 improperly closed Claimant's FIP case.

properly reduced Claimant's FAP benefits improperly reduced Claimant's FAP benefits.

FIP CLOSURE – NOTICE OF CASE ACTION 4/1/13 – (3RD SANCTION)

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department

properly closed Claimant's FIP case as a result of the triage held April 11, 2013.
 improperly closed Claimant's FIP case.

properly reduced Claimant's FAP benefits improperly reduced Claimant's FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

did act properly when it issued its Notice of Case Action dated February 19, 2013 which closed the Claimant FIP case on April 1, 2013 and imposed a second sanction and removed the Claimant from his FAP group for a one month period.

did not act properly when it issued its Notice of Case Action on April 1, 2013 which closed and sanctioned the Claimant's FIP case on May 1, 2013 and imposed a third sanction and removed the Claimant from his FAP group for a 6 month period.

Accordingly, the Department's decision is:

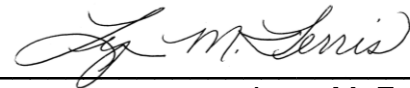
AFFIRMED with respect to the closure of the Claimant's FIP case effective April 1, 2013 and imposition of a second sanction with regard to the triage held on February 28, 2013 and removal of the Claimant from his FAP group for one month.

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REVERSED for the reasons stated above with regard to the closure of the Claimant's FIP case and removal of the Claimant from his FAP group for a 6 month period and imposition of a third sanction effective May 1, 2013 after the second triage held on April 11, 2013

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall initiate removal of the FIP employment-related third sanction applied on or about May 1, 2013 , from Claimant's record.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 14, 2013

Date Mailed: August 14, 2013

NOTICE OF APPEAL: 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 (60 days for FAP cases).

The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;

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- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]