

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-56453
Issue Nos.: 1038
Case No.: ██████████
Hearing Date: August 5, 2013
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 conducted from Detroit, Michigan on August 5, 2013. Claimant appeared and testified. Participants on behalf of the Department of Human Services ("Department") included ██████████ Family Independence Manager, and ██████████ ██████████ PATH Worker.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case due to a failure to participate in employment and/or self sufficiency-related activities without good cause?

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. Claimant was previously deferred from participating in the FIP work participation program due to medical reasons.
3. On an unverified date, Claimant's deferral from participating in the work program ended.

4. On April 23, 2013, the Department sent Claimant a Medical Needs-PATH form because she had again alleged a disability as grounds for deferral from participation in the work program. (Exhibit 6)
5. On May 1, 2013, the Department sent Claimant a PATH Appointment Notice instructing her to attend PATH orientation on May 14, 2013. (Exhibit 1)
6. On May 20, 2013, the Department sent Claimant a Notice of Noncompliance instructing her to attend a triage appointment on May 28, 2013 to discuss whether good cause existed for the noncompliance. (Exhibit 2).
7. On May 20, 2013, the Department sent Claimant a Notice of Case Action informing her that the Department intended to terminate her FIP benefits and impose a three month FIP sanction effective June 1, 2013 for her failure to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit 5)
8. On July 1, 2013, the Department received the Claimant's request for a hearing disputing the closure of her FIP case.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services 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 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities. BEM 233A (January 2013), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider, failing or refusing to appear for a scheduled appointment or meeting related to assigned activities, and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-2. 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. BEM 233A, pp. 3, 4.

Good cause includes any of the following: the client is employed for 40 hours/week, the client is physically or mentally unfit for the job, 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 Department, employment service provider, contractor, agency or employer failed to make a reasonable accommodation for the client's disability, no child care, no transportation, the employment involves illegal activities, the client experiences discrimination, an unplanned event or factor likely preventing or interfering with employment, long commute or eligibility for an extended FIP period. BEM 233A, p. 4. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p.1.

In processing a FIP closure, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance; the reason the client was determined to be noncompliant; and the penalty duration. BEM 233A. p.8-9. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (November 2012), p. 9. Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 7. A triage must be conducted and good cause must be considered even if the client does not attend. BEM 233A, pp.7-8 Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 7.

Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 8. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 6.

In this case, Claimant was an ongoing recipient of FIP benefits who had previously been granted a deferral from participation in the work program due to medical reasons. A person alleging a disability can be temporarily deferred from participating in the work program as a condition of FIP eligibility. BEM 230A (January 2013), pp.9-13.

At the hearing, Claimant testified that after her deferral ended, she informed the Department that she still could not participate in the work program due to medical reasons. On April 23, 2013, the Department sent Claimant a Medical Needs-PATH form that was to be completed by her doctor and returned to the Department so as to determine her ability to participate in work activities. There was no due date listed on the Medical Needs-PATH form informing Claimant as to when the form needed to be returned to the Department. (Exhibit 6). The Medical Needs-PATH form was completed by Claimant's doctor and returned to the Department on June 10, 2013. (Exhibit 6).

The Department testified that because there was no medical information received in the system, on May 1, 2013, the Department sent Claimant a PATH Appointment Notice instructing her to attend PATH orientation on May 14, 2013. (Exhibit 1). The Department

stated that because Claimant did not attend orientation, on May 20, 2013, it sent Claimant a Notice of Noncompliance instructing her to attend a triage appointment on May 28, 2013 to discuss whether good cause existed for the noncompliance. (Exhibit 2). On May 20, 2013, the Department also sent Claimant a Notice of Case Action informing her that the Department intended to terminate her FIP benefits effective June 1, 2013 and impose a three month sanction for her failure to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit 5); BEM 233A, pp. 7-9;BAM 220, p. 9.

A triage meeting was conducted on May 28, 2013 at which Claimant failed to appear. At the triage, the Department determined that Claimant did not have good cause for not attending PATH and found her to be in noncompliance.

At the hearing, Claimant testified that she did not receive the PATH Appointment Notice, the Notice of Noncompliance informing her of the triage date and the Notice of Case Action until the end of May 2013, after all of the important dates had lapsed. Claimant stated that during the time the Department was sending her these documents, the Post Office was holding her mail because she did not have enough money to pay for her PO Box. Claimant testified that when she received the documents at the end of May 2013, she called and left several messages for her Department worker but received no response. Claimant stated that the voicemail for her assigned Department worker indicated that he had been reassigned and she was instructed to call the front desk at the local Department office which she indicated she did several times with no success. Although Claimant was having issues with her mail at the Post Office, she testified that she did not contact the Department prior to receiving the documents.

Additionally, 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 PATH for more than 90 days because of a mental or physical condition, the client should be deferred in Bridges. BEM 230A, p.9. A three step process consisting of establishing a disability, defining the disability and referral to MRT must be completed. Clients will be temporarily deferred under the establishing incapacity category pending the determination of the MRT. BEM 230A, pp.9-11. The Department is then required to review the decision of the MRT and if determined work ready, the client is to be fully engaged in PATH without any accommodation. Clients determined as work ready are required to participate in PATH as defined by MRT. BEM 230A, p.11.

At the hearing, the Department did not present any evidence to establish that a referral had been made to MRT to determine whether or not Claimant was work ready. Instead, the Department referred Claimant to PATH and instructed her to attend prior to the MRT making a determination regarding her alleged disability and prior to the three step process discussed above being completed. Claimant should have been deferred under the establishing incapacity category pending the determination of the MRT and a referral to PATH prior to that time should not have been made. BEM 230A, pp.9-11.

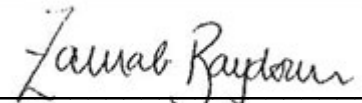
Therefore, it is found and determined that the Department did not act in accordance with Department policy when it terminated Claimant's FIP benefits and imposed a three month sanction.

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 not act in accordance with Department policy when it terminated Claimant's FIP benefits and imposed a three month sanction due to noncompliance without good cause. Accordingly, the Department's FIP decision is REVERSED.

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

1. Remove the sanction that was imposed on Claimant's FIP case;
2. Initiate reinstatement of Claimant's FIP case effective June 1, 2013 in accordance with Department policy and consistent with this Hearing Decision;
3. Initiate a referral to the MRT to determine Claimant's ability to participate in the work program;
4. Begin issuing supplements to Claimant for any FIP benefits that she was entitled to receive but did not from June 1, 2013, ongoing; and
5. Notify Claimant of its decision in writing in accordance with Department policy.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 13, 2013

Date Mailed: August 13, 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;
- 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

ZB/cl

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