

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

IN THE MATTER OF:

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Reg. No: 2013-57448
Issue No: 1038
Case No: ██████████
Hearing Date: August 13, 2013
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's Request for a Hearing was received on July 8, 2013. After due notice, a telephone hearing was held on Tuesday, August 13, 2013. The Claimant personally appeared and testified on her own behalf. The Department was represented by Jesse Marshall, PATH and Patricia Daniel, HS.

ISSUE

Whether the Department of Human Services (Department) properly sanctioned the Claimant's Family Independence Program (FIP) case for noncompliance with the Partnership Accountability Training Hope (PATH)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent material, and substantial evidence, on the whole record, finds as material fact:

1. The Claimant was a recipient of FIP benefits, which required her to participate in the PATH program. Department Exhibit 30.
2. On February 18, 2013, the Claimant job ended, but she did not report back to PATH as is required by policy. Department Exhibit 44.
3. On April 9, 2013, the Claimant was sent a PATH Appointment Notice, DHS 4785, for the Claimant to attend PATH on April 22, 2013. Department Exhibit 33.
4. On April 25, 2013, the Claimant was being triaged because she failed to report that her employment had ended and she did not attend PATH as was required by April 22, 2013 to re-engage in the PATH program. Department Exhibit 41-42.

5. On April 25, 2013, the Claimant was sent a Notice on Noncompliance (DHS-2444) requesting a triage meeting on May 2, 2013 for a 2nd Sanction of refused employment and a 3rd noncompliance for no initial contact with MWA. Department Exhibit 31-32.
6. The Department conducted a triage meeting on May 2, 2013 where the determination was made that the Claimant did not have good cause for not complying with the PATH requirements.
7. On April 25, 2013, the Department notified the Claimant that it would close the Claimant's FIP benefits as of June 1, 2013. Department Exhibit 34-40.
8. The Department received the Claimant's request for a hearing on July 8, 2013, protesting the closing of the Claimant's FIP benefits.

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, 8 USC 601, et seq. The Department of Human Services (DHS or 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 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 DHS when the client applies for cash assistance. The Partnership Accountability Training Hope (PATH) program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229, page 1.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Partnership Accountability Training Hope (PATH) or other employment-related activity 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 employment. PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. PATH case managers use the One-Stop Management Information System (OSMIS) to record the clients' assigned activities and

participation. WEIs not referred to PATH will participate in other activities to overcome barriers so they may eventually be referred to PATH or other employment service provider. DHS must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP). A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. For more about penalties; see BEM 233A. See BEM 230B and BEM 233B for FAP employment requirements. BEM 230A, page 1.

NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELF-SUFFICIENCY-RELATED ACTIVITIES

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

Failing or refusing to:

Appear and participate with PATH or other employment service provider.

Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.

The specialist should clear any alerts in Bridges relating to rejected PATH referrals and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST completion.

Develop a FSSP:

A FSSP completion appointment with the client must have been scheduled and the client failed to attend before considering a client noncompliant for FSSP completion.

Comply with activities assigned on the 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.

Participate in required activity.

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, pages 1-2.

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 JET. 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 PATH. 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.

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

NONCOMPLIANCE PENALTIES FOR ACTIVE FIP INDIVIDUALS AND MEMBER ADDS

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

For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.

For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.

For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction. BEM, Item 233A.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011, will be added to the individual's existing penalty count.

Noncompliance, without good cause, with employment requirements for FIP/RAP(SEE BEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233b. The FAP group member should be disqualified for noncompliance when all the following exist:

- The client was active both FIP and FAP on the date of the FIP noncompliance, and
- The client did not comply with FIP/RAP employment requirements, and
- The client is subject to a penalty on the FIP/RAP program, and
- The client is not deferred from FAP work requirements, and
- The client did not have good cause for the noncompliance. BEM 233B.

The Department should budget the last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the 1st noncompliance, 6 months for 2nd noncompliance, and a lifetime for the third noncompliance) after the FIP case closes for employment and/or self sufficiency-related noncompliance. The last FIP grant amount is the grant amount the client received immediately before the FIP case closed. BEM 233B.

The Claimant was an ongoing Family Independence Program (FIP) recipient. The Department had referred the Claimant to the PATH program as a condition of receiving FIP benefits. The Claimant was noncompliant with the PATH program on February 18, 2013 because her employment ended and she failed to re-engage in PATH by April 22, 2013. The Department conducted a triage meeting on May 2, 2013 and it was determined that the Claimant did not have good cause for noncompliance with the PATH program where the Department determined that the Claimant had a 2nd and 3rd sanction, which would result in the Claimant being sanctioned for a lifetime.

Based on the evidence and testimony available during the hearing, the Department's determination that the Claimant did not have good cause for PATH noncompliance with the PATH program is reasonable. The Department has not established that it acted properly when it closed the Claimant's FIP benefits for noncompliance with the PATH program for a 3rd sanction instead of a 2nd sanction. The Claimant's case was not closed as a result of a 2nd Sanction as is required for 6 months with the Claimant having the opportunity to reapply during the last month of the sanction. Therefore, the Department did not properly follow policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did not act in accordance with policy when it sanctioned the Claimant's FIP case for noncompliance with the PATH program for a 3rd sanction. This is the Claimant's 2nd sanction where her FIP benefits will be cancelled for 6 months. The Claimant can reapply during the last month of her sanction.

The Department's 3rd FIP sanction is **REVERSED**. The Department is ordered to remove the 3rd Sanction and implement the Claimant's case closure for a 2nd sanction for 6 months only.

/s/_____

Carmen G. Fahie
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 08/22/2013

Date Mailed: 08/23/2013

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. (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 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; or
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Claimant; or

- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

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

CGF/pw

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