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

IN THE MATTER OF: Reg.

No: 201337865 Issue No: 1038 Case No: Hearing Date: August 7, 2013 Washtenaw 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 hear ing received by the Department of Human Services (department) on March 25, 2013. After due notice, a telephone hearing was held on August 7, 2013. Claim ant appeared and provided testimony and Claimant's authorized representative, for the department was represented by for the department, a case manager, and for the department was represented by for the department's was the department's Washtenaw County office.

ISSUE

Whether the department properly terminat ed and sanctioned Cla imant's Family Independence Progr am (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 substantia I evidence on the whole record, finds as material fact:

- 1. At all times relevant to this hear ing, Claimant was a recipient of FIP benefits and, as a recipient of FI P benefits, Claimant was a mandatory PATH participant, unless otherwise deferred from the program.
- 2. On March 13, 2013, the departm ent mailed Claimant a N otice of Noncompliance (DHS 2444) and a Notice of Case Acti on for her failure to participate as required in em ployment and/or self -sufficiency related activities specifically, Claimant's failure to attend her March 12, 2013 Family Self-Sufficiency Plan (FSSP) appointment and her failure to timely submit her weekly activity logs by the March 15, 2013 deadline. The Notices indicated that, unless good caus e was established, effective April 1, 2013, her FIP case would be closed for a three-month sanctio n as this was Claimant's first n on-compliance. The Notice of Noncompliance also

scheduled a triage appointm ent for Claiman t on Marc h 21, 2013 at 1:00 p.m. (Department Exhibits 1, 3, 6, 7)

- 3. On March 25, 2013, Claim ant submitted her weekly activity log for the week of March 12, 2013. (Department Exhibit 5)
- 4. At Claimant's request, the Marc h 21, 2013 triage appointment was rescheduled and held via telephone on March 26, 2013, at which time Claimant attended the June 12, 2013 tr iage appointment, at which time the department concluded t hat Claimant did not es tablish good cause for her noncompliance with the PATH program. (Department Exhibit 2)
- 5. Effective April 1, 2013, Claimant's FIP case was clos ed and subject to a three-month sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (D epartment Exhibit 3)
- 6. On March 16, 2013, Cla imant submitted a hearing request protesting the department's closure of her FIP case and imposition of a three-month sanction. (Request for Hearing)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Mic higan are found in sections 400.901 to 40 0.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applic ant who requests a hearing because her c laim for assistance has been denied. Mich Admin Code R 400.90 3(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 prov ide an administrative hearing to revie w 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 Reconc iliation Act of 1996, P ublic Law 104-193, 8 USC 601, et seq. T he De partment administers the FIP program replaced the Aid t o MCL 400.10, et seq., and MAC R 40 0.3101-3131. The FI P program replaced the Aid t o 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 as sistance 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

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assistance. Partnership, Account ability, Training, Hope (PATH) program requirements, education and training opportunities, and asse ssments are covered by the PATH cas e 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, Acc ountability, Training, Hope (PATH) Program or other employment-related activities unless temporarily def erred or engaged in activities that meet partici pation requirements. These cl ients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. P ATH is a pr ogram administered by the Michiga Department of Licensing and Regulatory A ffairs (LARA) through the Michigan Works H program se rves employer s and job seekers for Agencies (MWAs). The PAT employers to have skilled workers and job s eekers to obtain jobs that provide economic self-sufficiency. A WEI who ref uses, with out good c ause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

Noncompliance of applic ants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to:
 - .. Appear and participat e with the Partnership, Accountability, Training, Hope (PATH) progr am or other emplo yment 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 activitie s assig ned to on the Family Self-Sufficiency Plan (FSSP).
 - .. Provide legitimate documentation of work participation.
 - .. Appear for a scheduled appoint ment or meeting rela ted to assigned activities.
 - .. Participate in employment and/ or self-sufficiency-related activities.
 - .. Accept a job referral.
 - .. Complete a job application.

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- .. 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 serv ices if the refusal prevents participation in an em ployment and/or self-sufficiency-relat ed activity. BEM 233A.

PATH participants will not be ter minated 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 m eeting or participate in a c onference call if attendance at the triage meeting is not possi ble. If a client calls to reschedule an already scheduled triage meeting, the client is offered a tele phone 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 in clude the date of noncompliance e, 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 nonc ompliance wit h employ ment 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 docu mented 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 shoul d 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 ident ified by the client) and unmet needs for accommodation. BEM 233A.

Good cause includes the following:

- The person is working at least 40 hour s per week on average and earning at least state minimum wage.
- The client is physically or mentally unfit for the job or activity, as shown by medical ev idence or other reliable informa tion. This includes any disabilityrelated limitations that preclude participation in a work and/or self-sufficiencyrelated activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.
- The client has a debilitating illne ss or injury, or a spouse or child's illness or injury requires in-home care by the client.
- The DHS, employment services provi der, contractor, agency, or employer failed to make reasonable acc ommodations for the client's di sability or the client's needs related to the disability.
- The client requested child c are se rvices from DHS, PAT H, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.
- The care is appropriate to the child's age, disabilities and other conditions.
- The total commuting time to and from work and the child care facility does not exceed three hours per day.
- The provider meets appl icable state and local st andards. Also, unlic ensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.
- The child care is provided at the rate of payment or reimbursement offered by DHS.
- The client requested transportation se rvices from DHS, PAT H, or other employment services provider prior to case closure and reas onably priced transportation is not available to the client.
- The employment involves illegal activities.
- The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.
- Credible information indicates an unplan ned event or factor which like ly prevents or significantly interferes wit h employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization.
- The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.
- Total commuting time exceeds: two hours per day, not including time to and from child care facilities **or** three hours per day, including time to and from child care facilities.

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 FI P 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 indica tes that the individual penal ty counter begins April 1, 2007. BEM 233A. Individual penalties se rved after October 1, 2011 will be added t o the individual's existing penalty count.

In this cas e, as a c ondition of her receip t of FIP benefits, Cla imant was required to comply with activities assigned to her on the Family Self-Sufficiency Plan, including her completion and timely submittal of her weekly activity logs and her attendance at any scheduled FSSP appointments for purposes of developing and maintaining a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC).

On March 13, 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 March 12, 2013 FS SP appointment and her failure to timely submit her week ly activity logs by the March 15, 2013 deadline. And, because t he depart ment ultimately determined that Claimant did not pr ovide good cause during her triage appointment for her noncompliance with the PATH program, the department closed Claimant's FIP case and imposed a three-month sanction due to this being Claimant's first noncompliance.

At the August 7, 2013 hearing, the department's represent ative and Claimant's case specialist, Yvette Har dy, reiterated that Cl aimant was assigned to triage because she failed to attend her March 12, 2013 FSSP appointment or call in advance to reschedule the appointment and failed to timely submit her weekly activity logs by the March 15, 2013 deadline. Ms. Hardy further testified that during her telephone triage appointment with Claim ant on March 26, 2013, Ms. Hard y informed her that she must submit verification of her inability to attend her FSSP appointment by April 1, 2013 in order to prevent closure of her FIP benefits for non compliance with the PATH program. Ms. Hardy further testified that Claimant did not provide such verification by the April 1, 2013 deadline.

Also at the August 7, 2013 hear ing, Claimant testified that she did not attend her March 12, 2013 FSSP appointment because she had transportation issues and was unable to get to the appointment. Claiman t further testified that she failed to timely submit her weekly activity logs by the March 15, 2013 deadline because she had misplaced them. In respons e to Claim ant's testimony, Ms. Hard y tes tified that at no time prior to the hearing did Claimant r eport to her that trans portation is sues prevented Claim ant from attending her FSSP appointment and Claimant did not disagree with this statement.

Testimony and other evidence must be we ighed 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 credi bility of this evidenc e 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). In evaluating t he credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness 's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

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 August 7, 2013 hearing, Claimant was clearly aware of and underst ood her re sponsibilities to the PATH program and has therefore failed to show good cause for her failure to participate as required in employment and/or self-sufficiency related activities. Cons equently, 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 t he above findings of fact and conclusion s of law, decides that t he department properly clos ed and im posed a three-month sanction on Claimant's FIP case effective Ap ril 1, 2013 for her no ncompliance 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: August 7, 2013

Date Mailed: August 8, 2013

NOTICE: Michigan Administrative Hearing S ystem (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal this Decision and Or der 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 <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> 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;
 - 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 Recons ideration/Rehearing Request P.O. Box 30639 Lansing, MI 48909-07322

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