

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

IN THE MATTER OF:

██████████
██████████
████████████████████

Reg. No.: 2014-1425
Issue No.: 1038
Case No.: ██████████
Hearing Date: November 4, 2013
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 4, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Case Manager, and ██████████, Family Independence Manager.

ISSUE

Whether the Department properly closed Claimant's case for Family Independence Program (FIP) benefits based on Claimant's 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. On August 1, 2013, the Medical Review Team denied Claimant's request for deferral and determined he was not disabled – work ready with limitations. See Exhibit 1.
3. On August 28, 2013, the Department sent Claimant a Quick Note notifying him that he was not deferred and that he has to participate in the Partnership. Accountability. Training. Hope. (PATH) program. Exhibit 1.

4. On August 28, 2013 the Department sent Claimant a PATH Appointment Notice, which scheduled him for an orientation on September 9, 2013. See Exhibit 1.
5. On September 4, 2013, Claimant contacted the Department to reschedule the PATH orientation due to a doctor's appointment the same day.
6. On September 4, 2013, the Department sent Claimant a new PATH Appointment Notice, which rescheduled him for an orientation on September 16, 2013. See Exhibit 1.
7. On September 11, 2013, the Department received proof from the Claimant that he had a doctor's appointment on his original orientation date of September 9, 2013. See Exhibit 1.
8. On September 16, 2013, Claimant failed to attend his scheduled orientation.
9. On September 20, 2013, the Department mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage appointment on September 26, 2013. Exhibit 1.
10. On September 20, 2013, the Department sent Claimant a Notice of Case Action closing Claimant's FIP case, effective November 1, 2013, based on a failure to participate in employment and/or self-sufficiency related activities without good cause. Exhibit 1.
11. On September 26, 2013, Claimant failed to attend the triage appointment and the Department found no good cause for Claimant's failure to attend employment and/or self-sufficiency related activities.
12. On September 30, 2013, Claimant requested a hearing disputing the FIP benefit termination.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (July 2013), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230A, p. 1.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A (July 2013), p. 9. Good cause is determined during triage. BEM 233A, p. 9. 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 and must be verified. BEM 233A, p. 4. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. BEM 233A, pp. 4-6.

In this case, Claimant was an ongoing recipient of FIP benefits. On August 1, 2013, the Medical Review Team denied Claimant's request for deferral and determined he was not disabled – work ready with limitations. See Exhibit 1. On August 28, 2013, the Department sent Claimant a Quick Note notifying him that he was not deferred and that he has to participate in the PATH program. Exhibit 1. On August 28, 2013 the Department sent Claimant a PATH Appointment Notice, which scheduled him for an orientation on September 9, 2013. See Exhibit 1. On September 4, 2013, Claimant contacted the Department to reschedule the PATH orientation due to a doctor's appointment the same day. On September 4, 2013, the Department sent Claimant a new PATH Appointment Notice, which rescheduled him for an orientation on September 16, 2013. See Exhibit 1.

On September 11, 2013, the Department received proof from the Claimant that he had a doctor's appointment on his original orientation date of September 9, 2013. See Exhibit 1. On September 12, 2013, the Department testified that it called the Claimant and left a voicemail for him telling that he is required to attend the PATH appointment on September 16, 2013. Claimant, though, testified that he never received this contact from the Department. Nevertheless, Claimant testified that he spoke to the Department before the rescheduled orientation notifying it that he cannot attend due to medical reasons. Ultimately, on September 16, 2013, Claimant failed to attend his scheduled orientation.

On September 20, 2013, the Department mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage appointment on September 26, 2013. Exhibit 1. On September 20, 2013, the Department also sent Claimant a Notice of Case Action closing Claimant's FIP case, effective November 1, 2013, based on a failure to

participate in employment and/or self-sufficiency related activities without good cause. Exhibit 1.

On September 26, 2013, Claimant failed to attend the triage appointment and the Department found no good cause for Claimant's failure to attend employment and/or self-sufficiency related activities. Claimant testified that he received the Notice of Noncompliance letter dated September 20, 2013; however, he mistakenly did not see the triage date on the letter.

Additionally, Claimant testified that the MRT decision did not consider other medical conditions that he had. However, the Department testified that the MRT did take into consideration the additional medical conditions that Claimant testified about.

Moreover, a review of Claimant's doctor note dated [REDACTED] indicated that Claimant's doctor marked that he is unable to work for an estimated duration of three months. See Exhibit 1. Claimant's doctor also stated do not assign work requiring sustained sitting, repeating bending, reach or twisting, continuous standing or walking, and squatting or kneeling. See Exhibit 1. Claimant testified that he is having ACL surgery. Claimant testified that it was originally scheduled in October 2013; however, it is now supposedly scheduled in November 2013. The Department testified that it did not defer Claimant based on this subsequent doctor's note because the MRT had already made a determination with the same information beforehand. The Department testified that it determined Claimant is work-ready with limitations. Moreover, the Department testified that Claimant's doctor's note indicated that there are limitations. See Exhibit 1.

Persons with a mental or physical illness, limitation, or incapacity expected to last less than three months and which prevents participation may be deferred for up to three months. BEM 230A, p. 11. This is referred to as short-term incapacity. BEM 230A, p. 11. The Department verifies short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - PATH, or other written statement from an M.D./D.O. BEM 230A, pp. 11-12. The Department sets the medical review date accordingly, but not to exceed three months. BEM 230A, p. 12.

Based on the foregoing information and evidence, the Department improperly closed Claimant's FIP benefits effective November 1, 2013, ongoing. First, BEM 230A states that upon the receipt of the MRT decision, it reviews the determination and information provided by MRT. BEM 230A, p. 13. Here, the Department properly determined that Claimant was not disabled – work ready with limitations. See Exhibit 1. The Department properly referred him to the PATH program after the MRT denial in accordance with Department policy.

Second, when a deferral is not granted, it is not a loss of benefits, termination or negative action. BEM 230A, p. 20. In this case, Claimant cannot dispute the MRT conclusion that his deferral is not granted based on BEM 230A. BEM 230A, p. 20.

Third, though, Claimant clearly provided medical evidence from his doctor that he has a short-term incapacity. The Department had this information before his rescheduled orientation and triage. A review of Claimant's doctor's note dated [REDACTED] indicated that Claimant's doctor stated he is unable to work for an estimated duration of three months. See Exhibit 1. This written statement from Claimant's doctor suffices the verification of short-term incapacity. BEM 230A, pp. 11-12. Claimant's physician clearly indicated a short-term incapacity in which it occurred after the MRT decision.

In summary, Claimant provided credible evidence that he should have been deferred for a short-term incapacity. See BEM 230A, pp. 11-12. Claimant's FIP benefits are reinstated as of November 1, 2013, ongoing and the sanction is removed. The Department will redetermine Claimant's short-term incapacity and deferral in accordance with Department policy. BEM 230A, p. 12.

DECISION AND ORDER

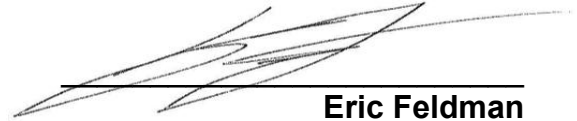
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it improperly closed Claimant's FIP benefits effective November 1, 2013, ongoing.

Accordingly, the Department's FIP decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove Claimant's first FIP sanction from his case;
2. Reinstate Claimant's FIP case as of November 1, 2013, ongoing;
3. Redetermine Claimant's short-term incapacity/deferral in accordance with Department policy;
4. Begin recalculating the FIP budget for November 1, 2013, ongoing, in accordance with Department policy;
5. Issue supplements to Claimant for any FIP benefits he was eligible to receive but did not from November 1, 2013, ongoing; and

6. Notify Claimant in writing of its FIP decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 12, 2013

Date Mailed: November 12, 2013

NOTICE OF APPEAL: 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.

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).

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

EJF/cl

2014-1425/EJF

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