

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014-4465
Issue No.: 1038
Case No.: ██████████
Hearing Date: November 21, 2013
County: Wayne (82-41)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 21, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████
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██████████ Participants on behalf of the Department of Human Services
(Department) included ██████████
██████████

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) for failure to cooperate with 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. Claimant had requested a deferral from participation in the PATH program alleging a disability due to inflammatory arthritis, degenerative bilateral joint disease in the knees, and fibromyalgia.
3. On April 25, 2013, the Medical Review Team (MRT) notified the Department that Claimant was not disabled, work ready with limitations and was not eligible for a deferral from the PATH program. (Exhibit 1)

4. On June 1, 2013, the Department sent Claimant a PATH Appointment Notice requiring her to attend a June 12, 2013, PATH orientation. (Exhibit 3)
5. Although Claimant attended the orientation, she did not consistently participate in the PATH program.
6. On July 12, 2013, Claimant provided the Department with a letter from her doctor stating that Claimant could stay a maximum of six hours in training due to severe lumbar spine pain and fibromyalgia.
7. The Department concluded that no new conditions had been alleged than those considered by MRT and advised Claimant that she had to continue to participate in the PATH program.
8. On July 31, 2013, Claimant submitted a Medical Needs-PATH form, DHS-54A, to her PATH worker, and Claimant was temporary deferred from PATH participation.
9. On September 18, 2013, the Department notified the PATH worker that Claimant was not excused from participating in the PATH program.
10. When Claimant failed to reengage in the PATH program, on October 2, 2013, the Department sent Claimant (i) a Notice of Noncompliance notifying her of the noncompliance and scheduling a triage on October 10, 2013, and (ii) a Notice of Case Action closing her FIP case effective November 1, 2013, for a three-month minimum because Claimant had failed to comply with employment-related activities.
11. On October 10, 2013, Claimant attended the triage, but the Department concluded that she had no good cause for her noncompliance.
12. On September 30, 2013, Claimant filed a request for hearing disputing MRT's finding that she was not disabled.

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.

Additionally, as a preliminary matter, it is noted that Claimant filed her hearing request on September 27, 2013, before she was sent the October 2, 2013, Notice of Case Action notifying her that her FIP case would close effective November 1, 2013, because of her noncompliance with employment-related activities with no good cause. However, Claimant had been advised that her case would close due to her noncompliance. While the Department contends that Claimant's request for hearing is untimely because MRT's decision was made more than 90 days prior to her hearing request, a client may not request a hearing in connection with the denial of a deferral based on disability. Rather, a client is not eligible for a hearing until she is advised of a loss of benefits due to failure to participate in required activities. BEM 230A (January 2013), p. 20. Because Claimant's request for hearing is tied into the anticipated closure of her FIP case, her hearing request is deemed timely filed.

As a condition of continued FIP eligibility, work-eligible individuals are required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (January 2013), p. 1; BEM 233A (January 2013), p. 1.

In this case, Claimant sought a deferral from the PATH program based on her disability which was identified on the Medical Needs – JET form, DHS-54E, as “inflammatory arthritis, DJD b/l knee, fibromyalgia.” MRT concluded that Claimant was work ready with limitations. Claimant was referred to the PATH program, and she initially complied. On July 31, 2013, Claimant submitted a Medical Needs form, DHS-54A, in which her doctor stated that Claimant was suffering from chronic lower back pain and fibromyalgia and that she could never work at her usual occupation or at any job. The PATH program placed Claimant in a pending deferral state while awaiting the Department's determination of Claimant's participation status. However, the Department concluded that Claimant was a mandatory work participant based on the previous MRT finding of work ready with limitations. When Claimant refused to reengage in the PATH program because she believed her ongoing participation requirements would require her to job search in person and this would be contrary to her doctor's directive that she not drive, the Department sent Claimant a Notice of Noncompliance scheduling a triage on October 10, 2013. Claimant attended the triage explaining she did not participate because she was advised not to drive by her doctor but the Department concluded that Claimant had failed to present good cause for her noncompliance.

When an individual claims at anytime during an ongoing benefit period 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 from ongoing participation in the PATH program while the determination of disability is processed. BEM 230 (October 1, 2013), p. 12. If MRT has made a disability determination but the client states she had new medical evidence or a new condition resulting in disability greater than 90 days, the Department must gather new verifications from the client and send for an updated MRT decision. BEM 230A, p. 16. The Department specialist must assign and maintain FSSP activities to ensure continued pursuit of self-sufficiency while

gathering verifications or assisting clients with obtaining medical verification or testing. BEM 230A, p. 16. If new medical evidence is not provided, the case is not sent back to MRT and the previous MRT decision stands. BEM 230A, p. 16. If the case is referred to MRT, the client's case is identified as "establishing incapacity" in the Department's system. BEM 230A, p. 13.

In this case, the July 31, 2013, DHS-54A alleged chronic low back pain and fibromyalgia. Although the Department concluded that MRT had already made a disability determination, the DHS-54A referenced a condition that was not alleged in the prior documentation submitted to MRT. Therefore, the Department did not act in accordance with Department policy when it failed to request additional verification concerning this new medical condition. Furthermore, on October 30, 2013, before Claimant's case closed on November 1, 2013, Claimant submitted a Medical Needs form, DHS-54A, in which her doctor indicated that that she suffered from recurrent and severe major depression and was unable to participate in her usual occupation or any job. Although the Department testified that it was processing the October 30, 2013, Medical Needs form, the Department did not act in accordance with Department policy when it closed Claimant's FIP case effective November 1, 2013, before the verification process was completed.

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 closed Claimant's FIP case.

DECISION AND ORDER

Accordingly, the Department's 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. Reinstate Claimant's FIP case effective November 1, 2013;
2. Remove the FIP employment-related sanction applied to Claimant's record on or about November 1, 2013;
3. Process Claimant's July 31, 2013 and October 30, 2013 DHS-54As to determine her eligibility for a PATH deferral based on disability;

4. Issue supplements to Claimant for any FIP benefits she was eligible to receive but did not from November 1, 2013, ongoing;



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 26, 2013

Date Mailed: November 26, 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

ACE/pf

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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