

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-6427
Issue No(s): 1038
Case No.: [REDACTED]
Hearing Date: November 21, 2013
County: Macomb-12

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] Family Independence Specialist Case Manager.

ISSUE

Did the Department properly close and sanction the Claimant's Family Independence Program (FIP) case for noncompliance with employment and/or self-sufficiency 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. The Claimant was an ongoing FIP recipient.
2. As a condition of receiving FIP benefits, the Department referred the Claimant to the Partnership Accountability Training Home (PATH) program.
3. On September 17, 2013, a PATH Appointment Notice was sent to the Claimant for an appointment date of September 30, 2013. (Exhibit A, page 3)
4. The Claimant did not attend the September 30, 2013, PATH appointment.
5. On October 7, 2013, a Notice of Noncompliance was issued to the Claimant indicating the FIP case would close unless good cause was found for the non-compliance. (Exhibit A, pages 4-5)

6. On October 17, 2013, the Department conducted a triage meeting with the Claimant and did not find good cause for the non-compliance. (Exhibit A, page 6)
7. On October 17, 2013, the Claimant filed a request for hearing protesting the Department's action.

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 MC L 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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

A Work Eligible Individual (WEI) and non-WEI¹, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that is 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. One example of good cause set forth in policy is when the client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client. BEM 233A

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the PATH Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the FSSP; (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview.² BEM 233A.

PATH participants will not be terminated from a PATH program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. 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.

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 PATH. 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 Department must also provide Claimant's with written notice of case actions. A notice of case action must specify the following: (1) the action(s) being taken by the department, (2) the reason(s) for the action, (3) the specific manual item which cites the legal base for an action or the regulation or law itself, (4) an explanation of the right to request a hearing, and (5) the conditions under which benefits are continued if a hearing is requested. The circumstances listed in policy for actions not requiring notice do not apply to FIP cases. BAM 220.

In this case, there is insufficient evidence that the Department issued written notice of the proposed FIP closure and sanction to the Claimant in accordance with BAM 220. No copy of a Notice of Case Action was submitted. The only notices included in the Department's hearing exhibits are the September 17, 2013 PATH Appointment Notice and the October 7, 2013 Notice of Noncompliance. (Exhibit A, pages 3-5) Of these two, only the Notice of Noncompliance indicated the potential closure and sanction

² The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

action on the Claimant's FIP case. However, the Notice of Noncompliance does not include all of the requirements of a case action notice. For example, it does not specify the effective date of the action, the specific manual item which cites the legal base for an action or the regulation or law itself, an explanation of the right to request a hearing, and the conditions under which benefits are continued if a hearing is requested. (Exhibit A, pages 4-5)

Additionally, it is noted that the Notice of Noncompliance indicates this is the second time the Claimant has been non-compliant. However, the Department did not provide any evidence to establish there had been a first non-compliance. The only prior non-compliance allegation mentioned during the hearing proceedings was appealed successfully by the Claimant. Since the Department's determination on that proposed action was reversed, it cannot be counted as a non-compliance for the Claimant. There must be sufficient evidence to establish that there was a first non-compliance to enact the sanction for a second non-compliance.

It is also noted that the Family Independence Specialist Came Manager's testimony indicated that he could not follow the ALJ's reasoning in the decision from the April 2013 hearing proceedings. If the Department disagreed with that ALJ's decision, the more proper step would have been to request rehearing or reconsideration of the ALJ's decision, rather than re-taking the same action on the Claimant's FIP case several months later.

The proposed FIP closure and sanction for a second non-compliance cannot be upheld when there is insufficient evidence to establish that written notice of the case action was issued to the Claimant in accordance with BAM 220 and that there was a first non-compliance. Accordingly, there is no need for this ALJ to review the underlying basis for the Department's proposed action.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed and sanctioned the Claimant's FIP case for non-compliance with employment and/or self-sufficiency related activities.

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. Re-instate Claimant's FIP case back to the date of closure.

2. Issue the Claimant any supplement that he may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 27, 2013

Date Mailed: November 27, 2013

NOTICE OF APP EAL: 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

CL/las

cc:

