

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20141903
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: November 6, 2013
County: Calhoun

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 6, 2013, from Lansing, Michigan. Participants on behalf of Claimant included herself and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included PATH CM [REDACTED] and FIM [REDACTED].

ISSUE

Did the Department properly sanction Claimant's Family Independence Program (FIP) for failure to participate in 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. Claimant was an ongoing recipient of Family Independence Program (FIP) benefits. It was mandatory for Claimant's benefit group to participate in Partnership, Accountability, Training, Hope (PATH).
2. On September 16, 2013, Claimant was sent a Notice of Non-Compliance (DHS-2444) which stated Mr. Shelton had not participated in required activities. The notice also scheduled a triage meeting for September 25, 2013. Claimant was also sent a Notice of Case Action (DHS-1605) stating that the Family Independence Program (FIP) would be sanctioned.

3. On September 25, 2013, [REDACTED] attended the scheduled meeting. Claimant submitted a request for hearing.
4. On September 27, 2013, the Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.

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), and Department of Human Services Reference Tables Manual (RFT).

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.

Department of Human Services Bridges Eligibility Manual (BEM) 233A Failure to Meet Employment and/or Self-Sufficiency Related Requirements: FIP (2013) and Department of Human Services Bridges Eligibility Manual (BEM) 233B Failure to Meet Employment Requirements: FIP (2013) provide the Department requirements and procedures relevant to this hearing.

In this case PATH personnel assert [REDACTED] was non-compliant because he falsified three job search log entries. At the triage meeting [REDACTED] asserted the three locations had applications on file for him and he did make contact with them during the week at issue. At this hearing, [REDACTED] testified that the three locations had applications on file for him and he did make contact with them during the week at issue.

Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) *Records of regularly conducted activity.* A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

With regard to the evidentiary rules cited above, the "statements" the Department wishes to prove, are that ██████████ did not make contact with the three potential employers. PATH worker, ██████████, recorded that the three potential employers were contacted and individuals at each location reported information which contradicted the job search log ██████████ submitted. The information recorded by ██████████ has been submitted to prove that ██████████ did not make contact with the three potential employers during the week at issue.

██████████ recorded statements are hearsay because he is not present to testify at the hearing. ██████████ recorded statements are admissible because they meet hearsay exception (6) cited above. The statements of the individuals at the potential employers are hearsay within hearsay.

The Michigan Rules of Evidence preclude hearsay because it is not reliable. Allowing hearsay also prevents any opportunity to question or cross examine the "declarant." Due process requires the opportunity to confront a witness in order to determine and present the specific details of their personal knowledge of the facts they are testifying about. Rule 803 cited above provides for a few exceptions to the inadmissibility of hearsay evidence. The exceptions identified exist because the unique circumstances that produced the hearsay are sufficient to establish that the hearsay is accurate and reliable.

Exception 6, cited above, is applicable to both Department and PATH records. During Department of Human Services' hearings, case notes made by a PATH worker or DHS case worker are frequently in evidence. The following example is provided to show both the value and limitations of the exception.

Client AB submits an application for Food Assistance Program (FAP) benefits. AB is interviewed by case worker CD. CD makes a case note entry that AB reported earned income of [REDACTED] per week and was sent a Verification of Employment (DHS Form 38). AB does not return the required verification and the application is denied. AB requests a hearing. CD is not present at the hearing but the case notes are in evidence.

The case notes are hearsay. They are admissible as an exception because they were made by a "person with knowledge" (CD) as a regular practice of a case worker's duty. Those circumstances create a very high probability that the case notes are accurate and reliable. The case notes can be submitted as proof that AB reported earned income of [REDACTED] and was sent a Verification of Employment (DHS Form 38). The case notes CANNOT be submitted as proof that AB was in fact receiving [REDACTED] per week of earned income. CD has personal knowledge of what AB said during the interview. CD DOES NOT have personal knowledge of whether AB was in fact working and if so how much AB was getting paid. That is why verification of the income must be obtained.

PATH employment related sanction hearings are notoriously plagued with this form of evidentiary issue. The hearsay exception is limited to recorded facts (statements) which the recorder has personal knowledge of and includes the words of AB's statement. The fact that CD recorded AB's statement does not provide any probability that AB's statement is accurate or reliable.

[REDACTED] recorded statements are admissible hearsay under exception (6). The recorded statements provide for absent testimony from [REDACTED]. Rule 602 cited above does not allow for testimony on a matter unless the witness has personal knowledge. [REDACTED] has personal knowledge of the conversations he had. He does not have personal knowledge of any events which occurred on the other end of the telephone line. The persons [REDACTED] spoke to might have personal knowledge regarding [REDACTED] contact with their organization. The persons [REDACTED] spoke to are the "declarants" of the statements the Department wishes to prove. Their statements are hearsay because they were not present at the hearing to testify. Therefore [REDACTED] recorded statements are hearsay which contains hearsay.

The hearsay statements from the persons [REDACTED] at the three potential employers are not admissible as an exception to regularly kept PATH records. There is no recorded evidence in this record of regularly kept records from the three potential employers.

The Department carries an initial burden of providing sufficient evidence to show their proposed action is in accordance with their policies. The evidence present in this case is not sufficient to establish that [REDACTED] falsified his job search log entries.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the failed to satisfy its burden of showing that it acted in accordance with Department policy when it sanctioned Claimant's Family Independence Program (FIP) for failure to participate in 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. Reinstate Claimant's Family Independence Program (FIP) benefits.
2. Supplement Claimant for any benefits she was otherwise eligible for but did not receive due to this incorrect action.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 11/12/2013

Date Mailed: 11/13/2013

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.

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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

GFH/sw

cc:

