

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20144749
Issue No.: 1038, 3008
Case No.: [REDACTED]
Hearing Date: November 14, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on November 14, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Family Independence Manager) and [REDACTED] (Case Manager at [REDACTED] ([REDACTED])).

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case and reduce his Food Assistance Program (FAP) benefits due to noncompliance with the Partnership Accountability Training Hope (PATH) program?

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 a FIP recipient and a FAP recipient with a group size of 2.
2. Claimant was a mandatory PATH participant.
3. On August 12, 2013, Claimant attended his mandatory application eligibility period (AEP) meeting where he was assigned to [REDACTED] from [REDACTED] and was provided with a transportation stipend.

4. Claimant attended PATH appointments on August 21, 2013, August 26, 2013 and August 30, 2013.
5. On August 30, 2013, Claimant met with [REDACTED] who determined that Claimant had completed the AEP process and was assigned to participate in the PATH STEPS program beginning on September 3, 2013 at 8:30a.m.
6. On September 3, 2013, Claimant presented to [REDACTED] but stated that he was unable to participate in STEPS due to being a full-time student.
7. As of September 3, 2013, Claimant was not eligible for enrollment with Training Clearinghouse and was required to participate with STEPS until his enrollment was approved.
8. Claimant did not participate in STEPS on September 3, 2013 and he was considered unexcused. [REDACTED] gave Claimant a noncompliance warning and provided him with an opportunity to re-engage with STEPS on September 4, 2013 at 8:30a.m. or be triaged.
9. On September 4, 2013, Claimant failed to appear for STEPS.
10. On September 6, 2013, Claimant presented to [REDACTED] and spoke with [REDACTED]. [REDACTED] informed Claimant that his file was returned to DHS and he will be referred to triage.
11. On September 6, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because he failed to participate as required in employment and/or self-sufficiency related activities. The Triage appointment was scheduled for September 18, 2013 at 2:00p.m.
12. The Department, on September 6, 2013, also mailed Claimant a Notice of Case Action (DHS-1605) which indicated that the Department intended to close his FIP case for three months and reduce his FAP benefits effective October 1, 2013 should Claimant be unable to show good cause for his noncompliance with PATH activities.
13. On September 18, 2013, Claimant did not attend Triage.¹ The Department found Claimant did not show good cause.
14. Claimant submitted a hearing request on September 27, 2013 protesting the closure of his FIP benefits and the reduction of his FAP benefits.
15. This is Claimant's first non-compliance with the PATH program for both FIP and FAP.

¹ Claimant received the DHS-2444 after September 18, 2013.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP), also referred to as “cash assistance,” was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

Effective January 1, 2013, as a condition of eligibility, FIP applicants must attend the Partnership Accountability Training Hope (PATH) program and maintain 21 days’ attendance. BEM 229. The program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229.

In order for the FIP application to be approved, all FIP applicants must complete each of the following: (1) begin the application eligibility period (AEP) by the last date to attend as indicated on the DHS-4785, PATH Appointment Notice; (2) complete PATH AEP requirements; (3) continue to participate in PATH after completion of the 21 day AEP. BEM 229. The Department will deny the FIP application if an applicant does not complete **all** of the above three components of the AEP. BEM 229.

A Work Eligible Individual (WEI) and non-WEI², who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A. 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. The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A. The goal is to bring the client into compliance. BEM 233A.

When assigned, clients must engage in and comply with all PATH assignments while the FIP application is pending. BEM 229. PATH engagement is a condition of FIP eligibility. BEM 229. Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. BEM 229. Bridges automatically denies FIP benefits for noncompliance while the application is pending. BEM 229. Bridges will not penalize Food Assistance when a client fails to attend PATH as a condition of eligibility when the noncompliant individual is not active FIP on the

² Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

date of the noncompliance. BEM 229. Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229.

Noncompliance without good cause, with employment requirements for FIP may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B. The Department will disqualify a FAP group member for noncompliance when all the following exist: (a) the client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance; (2) the client did not comply with FIP/RCA employment requirements; (3) the client is subject to a penalty on the FIP/RCA program; (4) the client is **not** deferred from FAP work requirements; and (5) the client did not have good cause for the noncompliance. BEM 233B.

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.³ 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. BEM 233A. The department coordinates the process to notify the Michigan Works Association (MWA) case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A.

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.

³ 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.

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. A claim of good cause must be verified and documented for member adds and recipients. 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 identified by the client) and unmet needs for accommodation. BEM 233A.

Good cause includes the following: (1) **working full-time at minimum wage** - the person is working at least 40 hours per week on average and earning at least state minimum wage; (2) **physically/mentally unfit** - the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information⁴; (3) **illness/injury** - the client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client; (4) **failure to accommodate** - the DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability; (5) **child care not provided** - the client requested child care services from DHS, the work participation program, 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; (6) **special child care** - the care is appropriate to the child's age, disabilities and other conditions; (7) **commuting time** - the total commuting time to and from work and the child care facility does not exceed 3 (three) hours per day; (8) **appropriate child care** - the provider meets applicable state and local standards⁵; (9) the child care is provided at the rate of payment or reimbursement offered by DHS; (10) **transportation not provided** - the client requested transportation services from DHS, the work participation program, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client; (11) **illegal** - the employment involves illegal activities; (12) **discrimination** - the client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs; (13) **unplanned event** - credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities⁶; (14) **new employment** - the client quits to assume employment comparable in salary and hours (the new hiring must occur before the quit); (15) **total commuting time** - total commuting time exceeds 2 (two) hours per day, NOT

⁴ This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A.

⁵ Also, unlicensed providers who are NOT registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

⁶ Unplanned events or factors include, but are not limited to, the following: (1) domestic violence; (2) health or safety risk; (3) religion; (4) homelessness; (5) jail and (6) hospitalization. BEM 233A.

including time to and from child care facilities or three hours per day, including time to and from child care facilities. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. BEM 233A. 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.

The sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

Here, the Department contends that Claimant failed to attend required PATH appointments (referred to STEPS) on September 3rd and September 4th. Claimant, on the other hand, contends that he was unable to attend STEPS as it conflicted with his obligations as a full-time student at [REDACTED] ([REDACTED]). Claimant testified that he was told that he would not be required to attend STEPS due his full-time student status once "the paperwork" was received.

Testimony and other evidence must be weighed 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). The weight and credibility of this evidence 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record shows that the Department meticulously documented the chronology of meetings and conversations Claimant had with [REDACTED] employees related to his required attendance at STEPS. Nothing in the record suggests that Claimant was relieved of his obligation to attend STEPS as a condition of receiving FAP and FIP assistance. When the Administrative Law Judge questioned Claimant about the specific conversation in this regard, he hesitated and appeared to be evasive. Claimant's testimony that someone at [REDACTED] mentioned that he may not be required to attend is not credible.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that Claimant was noncompliant the PATH program and has not shown good cause for failing to complete his attendance

requirements with mandatory PATH program activities (the STEPS program). As a result, the Department properly closed Claimant's FIP case for non-compliance and his FAP case was also properly reduced.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department: (1) properly closed Claimant's FIP case for noncompliance with PATH requirements, (2) properly reduced Claimant's FAP benefits and (3) properly imposed a 3 (three) month sanction affecting both the FIP and FAP programs. Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 18, 2013

Date Mailed: November 19, 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

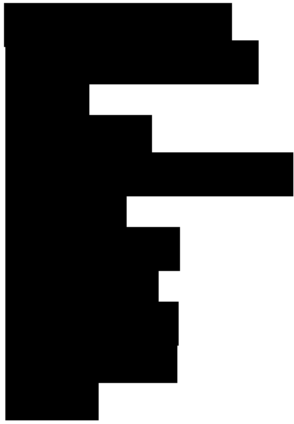
20144749/CAP

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

CAP/aca

cc:

A large black rectangular redaction box covers the names of the recipients in the cc field.

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