

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20145520
Issue No.: 1005
Case No.: [REDACTED]
Hearing Date: November 19, 2013
County: St. Clair

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 19, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's Authorized Hearing Representative (AHR)), [REDACTED] (Claimant's aunt) and [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Family Independence Specialist) and [REDACTED] (Family Independence Specialist/P.A.T.H. Coordinator).

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case due to 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 active for FIP benefits.
2. At all relevant times, Claimant had several medical problems including but not limited to: Addison's disease (adrenal insufficiency), postural orthostatic tachycardia syndrome, chronic fatigue syndrome, narcolepsy, primary auto immunodeficiency disease and chronic pain syndrome.

3. Claimant requested a medical deferral from the Partnership, Accountability, Training, Hope (PATH) program.¹
4. The Department forwarded a medical packet to the Medical Review Team (MRT) regarding Claimant's request for a deferral.
5. On August 2, 2013, the MRT determined that Claimant was not disabled and was work ready. The Department received the MRT Assessment for PATH (DHS-49-A-E) on August 8, 2013.
6. On August 26, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785), which scheduled Claimant to attend a PATH appointment at [REDACTED] Michigan Works (MWSC) for September 3, 2013 at 8:30a.m.
7. Claimant, who was accompanied by her mother, appeared for the appointment at [REDACTED] MWSC on September 3, 2013, but about 90 minutes after arriving, she collapsed and fell to the floor as she headed toward the bathroom. Claimant was unconscious, sweating, and had lost control of her bowels. After Claimant's mother was able to revive Claimant, she informed staff at MWSC that Claimant was too ill to participate in PATH. MWSC staff members advised Claimant that her early departure from PATH would be considered unexcused and may result in a triage. Claimant and her mother left the MWSC building and went home.
8. On September 20, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which, effective November 1, 2013, closed Claimant's FIP case for six months due to a second noncompliance with employment or self-sufficiency related activities.
9. On September 24, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) which scheduled a triage for October 2, 2013 at 9:00a.m.
10. On October 2, 2013, Claimant attended the triage and stated that her treating physicians believe that she is disabled from work. The Department found that Claimant did not have good cause.
11. Claimant requested a hearing to challenge the FIP closure on October 2, 2013.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual

¹ On or about March 4, 2013, the MRT determined that Claimant was work-ready, but after Claimant submitted additional medical records, the Department submitted another deferral request to the MRT.

(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.

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.

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.

The Department's computer system known as "Bridges" will automatically issue a DHS-4785, PATH Program Appointment Notice, from Bridges at application, member add, or when a client loses a deferral to schedule an appointment for each mandatory PATH participant. BEM 229. 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 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.

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. BEM 230A. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A.

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

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. BEM 230A. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A. **DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. BEM 230A.** Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A.

Section 504 of the American Disability Act defines a “disability” as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc. BEM 230A.

A disability that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. BEM 230A. A client may disclose a disability at any time. BEM 230A. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. BEM 230A.

Modifications or extra help may include, but are not limited to, the following: (1) reduced hours of required participation; (2) extended education allowances including more than 12 months allowed for vocational education; or (3) extended job search/job readiness time limit. BEM 230A.

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours in which they are engaged, even if they do not meet federal work requirements. BEM 230A.

A person with long-term incapacity, or disability, may be deferred. BEM 230A. At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or the work participation program for more than 90 days because of a mental or physical condition, the client should be deferred. BEM 230A. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A. This may include those who have applied for RSDI/SSI. BEM 230A.

When the Medical Review Team (MRT) decision and information is received, the Department must determine what accommodations the client needs to participate in the work participation program. BEM 230A. The person must pursue employment and/or

self-sufficiency-related activities and the Department must follow the procedure for accommodating disabilities. BEM 230A.

The Department must serve individuals who are determined work ready or work ready with limitations by the MRT when the individual cannot be served by the work participation program. BEM 230A. These clients have a mandatory participation status in Bridges. BEM 230A. The Department must assign self-sufficiency activities up to the medically permissible limit of the individual. BEM 230A. The Department should ask the work participation program to provide any test results or other documentation about the client's limitations at the time the client is referred back to DHS. BEM 230A.

When a client is determined by MRT to be work ready with limitations becomes noncompliant with the work participation program or his/her assigned activities, the Department shall follow the same instructions outlined in BEM 233A with regard to noncompliance.

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 JET 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 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

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.

was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. 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. 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 JET. BEM 233A. **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 may exist where: (1) the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information,⁴ (2) the client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client; or (3) 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. See 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.

Here, the Department argues that Claimant was noncompliant with the PATH program without good cause after she, on September 3, 2013, was "a no show to PATH and doesn't contact worker." (See Hearing Summary) Claimant, on the other hand, contends that she did show up on September 3, 2013, but was forced to leave PATH early due to illness.

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*,

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.

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 (ALJ) has carefully considered and weighed the testimony and other evidence in the record. This ALJ does not believe the Department's contention that Claimant was a no call, no show for the September 3, 2013 PATH appointment. Other than the hearing summary, the Department did not provide any objective documentation to show what did or did not occur on September 3, 2013. The Department did not provide a witness who was present at Michigan Works on September 3, 2013 to verify whether or not Claimant showed up for the PATH appointment. Claimant's mother testified that she accompanied Claimant to the PATH appointment on September 3, 2013 and that Claimant passed out on the floor on her way to the bathroom. Claimant's mother also testified that when Claimant passed out, she had diarrhea. It would be unreasonable for anyone to believe that Claimant could have been faking her illness at this time. (It should be noted that during the hearing, the ALJ was forced to go off the record because Claimant began to vomit.) This ALJ finds the testimony of Claimant's mother and aunt to be credible with regard to events that took place on September 3rd. Moreover, the Department did not provide any evidence to refute this contention. Thus, this ALJ finds that Claimant did, in fact, show up for PATH but was forced to leave early due to her illnesses. Based on the evidence in this case, there is no dispute that Claimant suffers from several medical conditions.

Claimant had good cause for leaving PATH early on September 3, 2013. As indicated above, BAM 600 defines good cause as "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." Claimant's myriad of illnesses, which caused her to pass out while at PATH on September 3rd, are most certainly beyond her control.

The Department should have used the best information available at triage to find that Claimant had good cause for her failure to complete PATH on September 3rd. There is no evidence that Claimant was feigning her symptoms at the time. Notwithstanding the conclusions of the MRT, Claimant has good cause because the evidence shows that, on September 3, 2013, she was physically unfit for job activity and had a debilitating illness. Rather than accommodate Claimant, the Department sent her to triage. Simply because the MRT determined that she was work-ready, it does not necessarily follow that Claimant cannot have good cause based on an illness. While this ALJ believes that Claimant does have good cause based on her medical conditions, this ALJ does not, and cannot, find that Claimant is disabled.

Although the Department contends that this was Claimant's second noncompliance with PATH, the Department did not provide evidence in this record that Claimant had any previous PATH-related infractions.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that Claimant had good cause for failing to

complete her attendance at PATH on September 3, 2013. As a result, the Department did not properly close Claimant's FIP case for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department improperly closed Claimant's FIP case for noncompliance with PATH requirements and the 6 (six) month sanction 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. Re-engage Claimant with the PATH program.
3. Determine what, if any, reasonable accommodations Claimant needs to participate in PATH.
4. Provide Claimant with any retroactive and/or supplemental FIP to the extent required by policy.

IT IS SO ORDERED.

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

Date Signed: November 21, 2013

Date Mailed: November 22, 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

CAP/aca

cc:

