


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

**IN THE MATTER OF:**



New Reg. No.: 201338315  
Old Reg. No.: 201324740  
Issue No.: 1038  
Case No.:   
Hearing Date: February 21, 2013  
County DHS: Wayne (17)

**SUPERVISING ADMINISTRATIVE LAW JUDGE:** Kathleen H. Svoboda

**DECISION AND ORDER OF RECONSIDERATION**

This matter is before the undersigned Supervising Administrative Law Judge pursuant to a timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on February 21, 2013.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs at issue, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was generated on October 3, 2013.

**ISSUE**

Did the Administrative Law Judge (ALJ) err in upholding the Department's termination of Claimant's Family Independence Program (FIP) benefits and imposition of a six-month sanction for noncompliance with Partnership, Accountability, Training, Hope (PATH) program requirements?

**FINDINGS OF FACT**

Upon a review of the entire hearing record, including the recorded testimony and evidence admitted, in addition to a review of the applicable law and policy governing the issues in this matter, this Administrative Law Manager makes the following findings of fact:

1. At all times relevant to the hearing, Claimant was a recipient of FIP benefits and, as a recipient of FIP benefits, Claimant was a mandatory PATH participant, unless otherwise deferred from the program.
2. On December 14, 2012, Michigan Works mailed Claimant a Noncompliance Warning Notice, informing her that she was noncompliant with the JET program due to her failure to come in or call Michigan Works to discuss her barrier to participating in the program. The Notice further informed Claimant that she must attend a reengagement appointment at [REDACTED] on December 27, 2012 at 12:00 p.m. in order to avoid triage and a potential FIP case closure.
3. Claimant neither attended nor called in advance to reschedule her reengagement appointment at [REDACTED] on December 27, 2012 at 12:00 p.m.
4. On December 27, 2013, Michigan Works mailed Claimant a Triage Meeting Notice, informing her that the Department would be issuing her a triage appointment notice.
5. On January 7, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) and a Notice of Case Action for her failure to participate as required in employment and/or self-sufficiency related activities. The Notices indicated that, unless she demonstrated good cause for her noncompliance, her FIP case would be closed effective February 1, 2013 for a six-month sanction as this was Claimant's second non-compliance. The Notice scheduled a triage appointment for January 14, 2013 at 9:00 a.m.
6. Claimant attended the January 14, 2013 triage appointment, at which time the Department concluded that Claimant did not establish good cause for her noncompliance with the JET program. Specifically, the Department noted:

During the triage, [Claimant] reported that she is living with someone whose home is being foreclosed. [Claimant] stated she does not pay rent, but does share in paying utilities. [Claimant] stated that she has not applied for SER or attempted to relocate. It was determined that [Claimant] does not have good cause since it has been over 30 days

since client reported potential homelessness and [Claimant] has not provided verification of attempts remove barrier.

7. On January 19, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) advising her that, effective February 1, 2013, her FIP case would be closed and subject to a six-month sanction for her failure to participate as required in employment and/or self-sufficiency related activities.
8. On January 14, 2013, Claimant submitted a hearing request, protesting the Department's closure of her FIP case.

### **CONCLUSIONS OF LAW**

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

FIP 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 the Mich Admin Code, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

In order to increase their employability and obtain employment, work eligible individuals (WEI) seeking FIP are required to participate in the JET Program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A; BEM 233A. Failing or refusing to attend or participate in a JET program or other employment service provider without good cause constitutes a noncompliance with employment or self-sufficient related activities. BEM 233A. Good cause is a valid reason for noncompliance which is beyond the control of the noncompliant person. BEM 233A. Good cause includes, among other things, where the client quits to assume employment comparable in salary and hours, so long as the new hiring occurred before the quit. BEM 233A. JET participants will not be terminated from a JET program without the Department first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. Good cause must be based on the best information available at the triage and must be considered even if the client does not attend the triage. BEM 233A.

In this case, Claimant asserts in her reconsideration request that the ALJ misapplied department policy, specifically BEM 228, which she argues only requires that a two-parent household achieve a combined 35-hour per week work requirement, instead of each individual having to fulfill the 35-hour per week work requirement. Claimant further asserts that she presented documentation at the hearing, which is also enclosed with her reconsideration request, establishing that Claimant was facing foreclosure and possible homelessness during the time period in question, which would have constituted good cause for her noncompliance with the JET program. Finally, Claimant asserts that

she presented testimony at the hearing establishing that she never received the Non-compliance Warning Notice of her re-engagement appointment, and had she received the Notice, she would have attended her re-engagement appointment and avoided being in noncompliance.

In the Conclusions of Law portion of the Hearing Decision, the Administrative Law Judge determined as follows, in relevant part:

The following additional findings of fact and conclusions of law are entered in this case. Claimant failed to participate for the required thirty-five (35) hours per week in the Work First program. On January 14, 2013, the Department conducted a triage conference at which the best available evidence was reviewed in order to determine if good cause existed to explain Claimant's failure to participate. The information presented at the triage included Claimant's attendance record, the fact that she was living in a house in which foreclosure proceedings were being initiated, the fact that Claimant was potentially homeless, and the Claimant's attempts to remove barriers to her employment. Dept. Exh. 3.

There are twelve categories of good cause in BEM 233A: the person is employed forty hours, the client is physically or mentally unfit, the client (or spouse or child) has an illness or injury, the employer (or DHS) failed to reasonably accommodate a disability, no child care is available, the available employment involves illegal activities, the client experiences unlawful discrimination at work, an unplanned event or factor occurs, the client changes jobs, the commuting time is excessive, and, the client is receiving Emergency FIP. BEM 233A explains the twelve types of good cause in more detail BEM 233A, pp. 4-5.

The Department is charged with the responsibility to determine good cause at the triage appointment. It is found and determined that the Department fulfilled its responsibility. It conducted a triage, with Claimant present, and reviewed all of the reasons she was unable to participate in Work First. It is found and determined that the best available information, as required by BEM 233A, does support the Department's conclusion that Claimant's explanations do not meet any of the twelve acceptable reasons for good cause. Category 6, an unplanned event or factor, would be the possible good cause category into which Claimant's explanation could fit. However, Claimant failed to present evidence regarding the immediacy of the foreclosure proceedings. Therefore, the unplanned event did not "significantly interfere" with Claimant's participation Work First, as required by BEM 233A. *Id.*, pp. 5, 7-8.

After careful review of the hearing record and file in this matter, it is clear that the ALJ erred in concluding that the Department acted properly in closing and sanctioning Claimant's FIP case for noncompliance with Work First requirements. Specifically,

Claimant testified at the hearing that she did not attend her re-engagement appointment on December 27, 2012 because she never received the Noncompliance Warning Notice that the Department purportedly mailed to her on December 14, 2012 – and, had she received the Notice, Claimant further testified that she would have attended the re-engagement appointment and been able to avoid the referral to triage. Significantly, the Department’s representative acknowledged during the hearing that the correspondence mailed to Claimant in December 2012 was returned undeliverable to the Department, which obviously lends credence to Claimant’s testimony.

Moreover, relative to the issue Claimant’s foreclosure, Claimant presented documentary evidence at the hearing of a foreclosure notice that had been posted on her home on or about November 9, 2012, at which time Claimant had reported the circumstance to her DHS case specialist. The ALJ did not admit this evidence in the record and instead agreed with the Department’s representative that the documentation should have been submitted to the Department within 10 days of Claimant having reported the barrier on or about November 9, 2012. However, the Department’s representative offered no testimony or evidence establishing that she had made Claimant aware of the need to submit verification of her foreclosure situation within a certain timeframe. Likewise, the Department’s case notes, admitted into the record as Department Exhibit 3, page 22, reflect that the purpose of the Department’s December 14, 2012 re-engagement letter to Claimant was to give Claimant the opportunity to come and discuss her barriers to participating in the Work First/JET program, an opportunity the Department conceded at the hearing was never afforded to Claimant because Claimant never received the re-engagement letter.

Accordingly, it is found that the Administrative Law Judge’s decision upholding the Department’s termination of Claimant’s FIP benefits and imposition of a six-month sanction for noncompliance with PATH/JET requirements was incorrect.

### **DECISION AND ORDER**

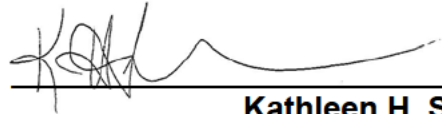
The Administrative Law Manager, based on the above findings of fact and conclusions of law, finds that the Administrative Law Judge erred in upholding the Department’s termination of Claimant’s FIP benefits and imposition of a six-month sanction for noncompliance with PATH/JET requirements.

It is therefore ordered that the decision of the Administrative Law Judge generated at the conclusion of the February 21, 2013 hearing and mailed on February 26, 2013 is **REVERSED** and the action taken by the Department is **NOT UPHeld**.

201338315/KHS  
201324740 REHD/RECON

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate the reinstatement of Claimant's FIP benefits for the benefit period effective February 1, 2013;
2. Remove the sanction from Claimant's penalty counter; and
3. Issue Claimant any retroactive FIP benefits to which she is entitled.



**Kathleen H. Svoboda**  
Supervising Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: December 20, 2013

Date Mailed: December 20, 2013

**NOTICE:** The law provides that within 30 days of receipt of the above Reconsideration Decision and Order, the claimant may appeal it to the circuit court for the county in which she lives.

KHS/aca

cc:

