

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 2014-14418
Issue No(s): 1008
Case No.: ██████████
Hearing Date: December 19, 2013
County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 December 19, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Family Independence Specialist Case Manager.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case based on a failure to participate in employment 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 an ongoing recipient of FIP benefits.
2. On October 28, 2013, the Department sent Claimant a PATH Appointment Notice instructing her to attend the PATH program on November 4, 2013.
3. On November 16, 2013, the Department sent Claimant a Notice of Noncompliance instructing her to attend a triage meeting on November 22, 2013, to discuss whether good cause existed for the noncompliance. (Exhibit 1, pp. 11-12)
4. On November 16, 2013, the Department sent Claimant a Notice of Case Action informing her that effective December 1, 2013, her FIP case would be closing and

a six month sanction imposed, based on a failure to participate in employment related activities without good cause for a second time. (Exhibit 1, pp.6-10)

5. On November 22, 2013, Claimant submitted a hearing request disputing the Department's actions.

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

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities. BEM 233A (July 2013), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider, failing or refusing to appear for a scheduled appointment or meeting related to assigned activities, and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-4. 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. BEM 233A, pp. 4-6.

Good cause includes any of the following: the client is employed for 40 hours/week, the client is physically or mentally unfit for the job, the client has a debilitating illness or injury or a spouse or child's illness or injury requires in-home care by the client, the Department, employment service provider, contractor, agency or employer failed to make a reasonable accommodation for the client's disability, no child care, no transportation, the employment involves illegal activities, the client experiences discrimination, an unplanned event or factor likely preventing or interfering with employment, long commute or eligibility for an extended FIP period. BEM 233A, pp. 4-6. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p.1.

In processing a FIP closure, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance; the reason the client was determined to be noncompliant; and the penalty duration. BEM 233A. p.9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the

reason(s) for the action. BAM 220 (July 2013), p. 10. Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 8-10. A triage must be conducted and good cause must be considered even if the client does not attend. BEM 233A, pp. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13.

Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In this case, as a condition of receiving FIP benefits, Claimant was required to participate in the PATH program. The Department testified that because Claimant did not attend her scheduled PATH appointment on [REDACTED], it sent Claimant a Notice of Noncompliance informing her that she was required to attend a triage meeting on [REDACTED], to discuss whether or not she had good cause for her failure to attend PATH on [REDACTED]. The Department stated that Claimant failed to attend the triage meeting and did not contact the Department prior to the meeting to inform the Department that she was unable to attend. The triage was conducted in Claimant's absence, at which the Department determined that Claimant did not have good cause for her failure to cooperate with employment related activities, and initiated the closure of her FIP case, effective [REDACTED].

At the hearing, Claimant testified that on [REDACTED] she went to the emergency department at the hospital due to a foot injury. Claimant stated that because of her injury, she was unable to check her mail until [REDACTED], the day of the PATH appointment because she lives on the seventh floor of her apartment complex and there is no reliable elevator. Claimant testified that when she got the PATH appointment notice, she called the Department and left her case worker a message informing her case worker that she was not able to attend that day. Claimant provided the emergency room discharge papers in support of her testimony. (Exhibit A).

Claimant confirmed that she received the Notice of Noncompliance and stated that she could not attend the triage meeting because she did not have transportation that day and that there is no bus route near her house. Claimant stated that the location of the triage was 16 miles away from her home. Claimant testified that she called the Department on the day of the triage in the morning, to inform the Department that she would not be able to attend the triage that day. The Department confirmed Claimant's testimony, however, disputed that the phone call was received in the morning before the triage. At the hearing, the Department acknowledged that Claimant has been having difficulties with her participation in PATH and indicated that the Department has not resolved all of Claimant's barriers to participation.

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 after further review of the evidence presented, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Claimant did not have good cause for her failure to participate in employment related activities, closed Claimant's FIP case and imposed a six month sanction.

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. Remove the sanction that was imposed on Claimant's FIP case;
2. Reinstate Claimant's FIP case effective December 1, 2013;
3. Issue supplements to Claimant for any FIP benefits that she was entitled to receive but did not from December 1, 2013, ongoing; and
4. Notify Claimant of its decision in writing.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 26, 2013

Date Mailed: December 26, 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

ZB/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]