

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201327647
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: May 21, 2013
County: Wayne (41)

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 May 21, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] (Claimant) and [REDACTED] [REDACTED] (Claimant's spouse). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] (Family Independence Specialist), [REDACTED] (Family Independence Manager), [REDACTED] (PATH Coordinator) and [REDACTED] (Case Manager Access Dearborn).

ISSUE

Whether the Department properly closed Claimant's Family Independence Program (FIP) benefits due to Claimant's noncompliance with the Partnership Accountability Training Hope (PATH) program requirements?

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's husband ([REDACTED] hereafter "Mr. [REDACTED]") was a FIP recipient and a mandatory PATH participant.
2. On January 24, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because Mr. [REDACTED] had allegedly refused suitable employment. The Triage appointment was scheduled for January 31, 2013 at 1:30p.m.
3. On January 31, 2013, Claimant and Mr. [REDACTED] attended Triage and denied that he had refused an offer of employment and indicated that he was not qualified for the

position as it required a GED. The Department found that Claimant and Mr. [REDACTED] did not show good cause.

4. The Department mailed Claimant a Notice of Case Action (DHS-1605) on January 24, 2013 which imposed a 3 month penalty and closed Claimant's FIP case effective March 1, 2013.
5. Claimant submitted a hearing request on January 31, 2013 protesting the closure of FIP benefits.

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.

Federal and state laws require each work eligible individual (WEI) in the FIP and Refugee Assistance Program (RAP) group to participate in the PATH Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. BEM 230A. WEIs not referred to the work participation program will participate in other activities to overcome barriers so they may eventually be referred to the work participation program or other employment service provider. BEM 230A. A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230A.

A WEI and non-WEI¹, 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

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

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 generate an alert when active FIP recipients, including clients losing deferral or member adds, do not attend PATH. BEM 229.

The work participation program is administered by the Workforce Development Agency, State of Michigan (WDASOM) through the Michigan one-stop service centers. BEM 230A. **The work participation program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. BEM 230A.**

All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. BEM 230A. WEIs who are temporarily deferred are required to participate in activities that will help them overcome barriers and prepare them for employment or referral to an employment service provider. BEM 230A.

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**.² BEM 233A.

Refusing suitable employment means doing any of the following: (1) voluntarily reducing hours or otherwise reducing earnings; (2) quitting a job except if the work participation program verifies the client changed jobs or reduced hours in order to participate in a work participation program approved education and training program; (3) firing for misconduct or absenteeism (not for incompetence)³; (4) **refusing a bona fide offer of**

² 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.

³ Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or

employment⁴ or additional hours up to 40 hours per week. BEM 233A. Exception: Meeting participation requirements is not good cause for refusing suitable employment, unless the employment would interfere with approved education and training. BEM 233A. An applicant or member add who refused employment more than 30 days prior to the date of application or date of member add may not be penalized. BEM 233A.

Noncompliance also can be found if an applicant, recipient or a member add, without good cause, does any of the following: (1) states orally or in writing a definite intent not to comply with program requirements; (2) threatens, physically abuses or otherwise behaves disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity; or (3) **refuses employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity**. BEM 233A.

JET participants will not be terminated from a JET 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 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

alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual’s work. BEM 233A.

⁴ A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent. BEM 233A.

disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. 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 argues that Claimant's spouse (Mr. ██████) refused a bona fide offer of employment to work for a trucking agency which could earn an income of up to \$40,000 per year. Specifically, the Department submits that a representative from a trucking company offered Mr. ██████ the following: (1) tuition assistance for training; (2) commercial driver's license (CDL) assistance; (3) health insurance; and (4) retirement. According to the Department, Mr. ██████ refused employment by failing to return telephone messages from the representative of the trucking company.

Claimant and Mr. ██████, on the other hand, contend the following: (1) Mr. ██████ was not qualified for the position at the trucking company as it required a high school diploma or GED; (2) Mr. ██████ never actually declined an offer of employment at any time; and (3) Mr. ██████ did not have reliable transportation.

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 Department witnesses were credible and the Update/View Case Notes were persuasive. During the hearing, the Department provided credible testimony that the job in question did not require a GED or high school diploma. Even if it did, the Department provided evidence that Mr. ██████ had missed scheduled GED tests. The record also shows that the Department provided Mr. ██████

with gas cards and/or bus passes. The Department even offered Mr. [REDACTED] assistance with expenses related to obtaining his CDL if necessary.

This Administrative Law Judge finds that Mr. [REDACTED] was noncompliant in the following respects: (1) he refused suitable employment; (2) he failed to accept a job referral; and/or (3) he failed to participate in employment and/or self-sufficiency-related activities. Although there is no evidence that Mr. [REDACTED] expressly refused an offer of employment, his actions can fairly be interpreted as a refusal of employment. Every time the Department attempted to provide Mr. [REDACTED] with a solution to procure employment, he offered excuses (i.e. no GED, no transportation, etc.). This is not the behavior of a person who is actively taking steps to economic self-sufficiency, but demonstrates manipulation and incorrigibility. There was no good cause provided in this record. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department properly closed Claimant's FIP case due to noncompliance without good cause. This is Claimant's (Mr. [REDACTED]'s) first non-compliance with the PATH program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly closed Claimant's FIP case for noncompliance with WF/JET requirements and the 3 (three) month sanction is **AFFIRMED**.

IT IS SO ORDERED.

/s/

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

Date Signed: May 23, 2013

Date Mailed: May 23, 2013

NOTICE: 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
 - the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc:

