

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201338576
Issue No: 1038
Case No: [REDACTED]
Hearing Date: May 1, 2013
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on March 28, 2013. After due notice, a telephone hearing was held on May 1, 2013. Claimant appeared and provided testimony and Claimant's sister, [REDACTED], provided testimony on Claimant's behalf. The department was represented by [REDACTED], a family independence supervisor and case manager with the Partnership, Accountability, Training, Hope (PATH) program, and [REDACTED], a PATH liaison for Michigan Works, both of whom are with the department's Macomb County office.

ISSUE

Whether the department properly closed and sanctioned Claimant's Family Independence Program (FIP) benefits based on Claimant's noncompliance with PATH requirements?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all times relevant to this 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 March 11, 2013, Claimant reported to the Michigan Works office and advised the onsite case manager that he had been fired from his community service participation (CSP) site, the [REDACTED], on March 11, 2013. At this time, the onsite case manager instructed

Claimant to return to the Michigan Works office on March 12, 2013 to meet with his CSP specialist. (Department Exhibit 4)

3. On March 12, 2013, Claimant met with his CSP specialist at the Michigan Works office and explained that he was told that he was fired from his position at the [REDACTED] because he smelled of alcohol and because bottles were found in restrooms in the past few weeks. Claimant further explained that he did not drink alcohol and believed his termination was due to his criminal record. (Department Exhibit 4)
4. On March 12, 2013, the Michigan Works' CSP specialist contacted the [REDACTED] store manager, who advised that Claimant was terminated due to smelling of alcohol and due to liquor bottles having been found in the restroom there. (Department Exhibit 4)
5. On March 13, 2013, the department mailed Claimant a Notice of Noncompliance (DHS 2444) and a Notice of Case Action for his failure to participate as required in employment and/or self-sufficiency related activities. The Notices indicated that, unless good cause was established, his FIP case would be closed effective April 1, 2013 for a three-month sanction as this was Claimant's first non-compliance. The Notice scheduled a triage appointment for March 19, 2013 at 9:00 a.m. and advised Claimant that the triage appointment was an opportunity to report and verify the reason for his noncompliance with the program. (Department Exhibits 3, 2)
6. Claimant attended the March 19, 2013 triage appointment by telephone and reported that he had been aware of liquor bottles in the restroom at his CSP site because he had observed them himself. Claimant further reported that he was not drinking and would not do so. Claimant further reported that he had come directly to the Michigan Works office following his termination in order that the onsite staff could observe his sobriety. (Department Exhibits 4, 5)
7. As a result of Claimant's triage appointment, the department concluded that he had established good cause for his noncompliance and Claimant was instructed to return to the Michigan Works office on March 20, 2013 for an 8:30 a.m. meeting with his case manager. Claimant was further advised that his failure to report on March 20, 2013 would result in the closure of his FIP benefits and a three-month sanction for noncompliance. (Department Exhibits 4, 5)
8. Claimant did not attend his March 20, 2013 meeting with his case manager and, effective April 1, 2013, Claimant's FIP case was closed and subject to a three-month month sanction due to his failure to participate as

required in employment and/or self-sufficiency related activities. (Department Exhibit 2)

9. On March 28, 2013, Claimant submitted a hearing request protesting the department's closure of his FIP case. (Department Exhibit 1)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, et seq. The Department administers the FIP program pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by the department when the client applies for cash assistance. Partnership, Accountability, Training, Hope (PATH) program requirements, education and training opportunities, and assessments are covered by the PATH case manager 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 RAP group to participate in the Partnership, Accountability, Training, Hope (PATH) Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. PATH is a program administered by the Michigan Department of Licensing and Regulatory Affairs (LARA) through the Michigan Works Agencies (MWAs). The PATH program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- . Failing or refusing to:
 - .. Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
 - .. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - .. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
 - .. Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP).
 - .. Provide legitimate documentation of work participation.
 - .. Appear for a scheduled appointment or meeting related to assigned activities.
 - .. Participate in employment and/or self-sufficiency-related activities.
 - .. Accept a job referral.
 - .. Complete a job application.
 - .. Appear for a job interview (see the exception below).
- . Stating orally or in writing a definite intent not to comply with program requirements.
- . Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- . Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. 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. The

department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

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

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 PATH. 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.

The penalty for noncompliance without good cause is FIP closure. Effective October 1, 2011, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for not less than three calendar months.
- . For the second occurrence on the FIP case, close the FIP for not less than six calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for a lifetime sanction. BEM 233A.

Department policy further indicates that the individual penalty counter begins April 1, 2007. BEM 233A. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

In this case, Claimant was required to participate in the PATH program as a condition of Claimant's receipt of FIP benefits. On March 13, 2013, the department found that

Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, his termination from his CSP employment. And, while the department initially found that Claimant’s explanation at his March 19, 2013 triage appointment for his termination established good cause, because Claimant did not report as instructed to a March 20, 2013 meeting with his Michigan Works case manager, the department ultimately concluded that Claimant failed to provide good cause for his noncompliance and closed Claimant’s FIP case effective April 1, 2013 for a three-month sanction.

At the May 1, 2013 hearing, the department’s PATH liaison for Michigan Works testified that the department’s final determination of no good cause for Claimant’s noncompliance was reached after Claimant’s case specialist contacted Claimant’s CSP store manager and was advised that Claimant’s termination was because he had consumed alcohol either prior to or during his employment on site.

Also at the hearing, Claimant adamantly denied that he consumed alcohol at any time prior to or during his employment at the CSP site. Claimant further testified that he had himself observed liquor bottles in the restroom at the CSP site and denied that such bottles were used or discarded by him. Claimant further testified that he had no previous problems with his job performance at the site and it was his belief that his termination was the result of a personal animus because the store manager was friends with a co-worker with whom Claimant had shared text messages the day before his firing.

In support of Claimant’s testimony, Claimant’s sister, [REDACTED], testified that Claimant lives with her and that she drives him to his worksite. Ms. [REDACTED] further testified that she has never observed Claimant consuming alcohol or liquor at home or on the way to work, nor has he obtained any alcohol or liquor from a store on their way to his worksite. Ms. [REDACTED] further testified Claimant had previously reported to her his observation of liquor bottles in the trash at his worksite. Ms. [REDACTED] further testified that Claimant has been working hard to become a responsible person and to do the right thing in taking care of his young child and that this alleged intoxication at his worksite would be out of character for him.

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). Moreover, 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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds the testimony of Claimant and Claimant’s sister to be credible and persuasive – particularly, against the backdrop of the department’s own purely circumstantial evidence of the basis for Claimant’s termination, as well as the department’s receipt on March 12, 2013 of a *satisfactory* employment evaluation for

Claimant from his CSP site. Accordingly, this Administrative Law Judge finds that, based on the competent, material, and substantial evidence presented during the hearing, the department has failed to meet its burden to show that Claimant was noncompliant without good cause with PATH requirements. As the department has failed to show Claimant was noncompliant without good cause, the department improperly closed and improperly imposed a three-month sanction on Claimant's FIP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly closed and improperly imposed a three-month sanction on Claimant's FIP case for his non-compliance with PATH requirements. The department's actions are therefore **REVERSED** and the department is ordered to immediately reinstate Claimant's FIP benefits for the benefit period effective April 1, 2013; (ii) remove the sanction from Claimant's penalty counter; and (iii) issue Claimant any retroactive FIP benefits to which he is entitled.

It is SO ORDERED.

/s/

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 3, 2013

Date Mailed: May 6, 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 this Decision and Order to Circuit Court within 30 days of the receipt 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 errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

