

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201338701  
Issue No: 1038  
Case No: [REDACTED]  
Hearing Date: May 2, 2013  
Calhoun County DHS (21)

**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 29, 2013. After due notice, a telephone hearing was held on May 2, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a case manager with the department's Calhoun County office; [REDACTED], a case manager, and [REDACTED], a case manager and policy specialist, both with the Michigan Works Partnership, Accountability, Training, Hope (PATH) program.

**ISSUE**

Whether the department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits and properly reduced Claimant's Family Assistance Program (FAP) benefits based on Claimant's noncompliance with the Partnership, Accountability, Training, Hope (PATH) program 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, as acknowledged by her electronic signature on her December 13, 2012 application for FIP benefits. (Department Exhibit 3)
2. On January 2, 2013, Claimant signed a document titled "PET and CVT Agreement" and, in doing so, acknowledged with her signature her understanding of the requirements of the JET (PATH) program including,

among other things, her responsibility to keep track of her class hours and study hours and to submit her log sheets every week to the JET program. (Department Exhibit 4, p. 4)

3. On January 2, 2013, Claimant also signed a Michigan Works form and acknowledged her understanding of her responsibility to contact JET and the department if she is not able to report in as assigned or has any change in her circumstances such that she would not be able to complete her JET hours of participation. (Department Exhibit 4, p. 3)
4. On March 1, 2013, the department mailed Claimant a Noncompliance Warning Letter, informing Claimant that she is in noncompliance with the JET program due to her excessive absences and lack of job search activities for six consecutive weeks. The department further informed Claimant that she must meet with her JET caseworker and reengage with the JET program on March 6, 2013 at 9:00 a.m. or further negative action will be taken on her case. (Department Exhibit 4, pp. 5, 8-18)
5. Claimant neither attended nor called in advance to reschedule her March 6, 2013 reengagement appointment. (Department Exhibit 4, pp. 6-7)
6. On March 13, 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 good cause was established, effective April 1, 2013, her FIP case would be closed for a three-month sanction as this was Claimant's first non-compliance. The Notice of Noncompliance also scheduled a triage appointment for Claimant on March 20, 2013 at 1:15 p.m. (Department Exhibits 1, 2, 4 at pp. 8-18)
7. Claimant neither attended nor called in advance to reschedule her March 20, 2013 triage appointment. (Department Exhibit 4, p. 7)
8. Effective December 1, 2012, Claimant's FIP case was closed and subject to a three-month sanction for her failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibit 2)
9. On March 25, 2013, Claimant submitted a hearing request protesting the department's closure of her FIP case and imposition of a three-month sanction. (Request for Hearing)

## **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.

Good cause includes the following:

- The person is working at least 40 hours per week on average and earning at least state minimum wage.
- The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. 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.
- 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 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.
- The client requested child care services from DHS, PATH, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.
- The care is appropriate to the child's age, disabilities and other conditions.

- The total commuting time to and from work and the child care facility does not exceed three hours per day.
- The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.
- The child care is provided at the rate of payment or reimbursement offered by DHS.
- The client requested transportation services from DHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.
- The employment involves illegal activities.
- The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.
- Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:
  - Domestic violence.
  - Health or safety risk.
  - Religion.
  - Homelessness.
  - Jail.
  - Hospitalization.
- The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.
- Total commuting time exceeds: two hours per day, not including time to and from child care facilities **or** three hours per day, including time to and from child care facilities.

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, her failure to submit her education activity logs for nine weeks, from January 13, 2013 through March 16, 2013. And, because Claimant did not attend or call to reschedule her March 20, 2013 triage appointment or otherwise provide any explanation for failure to attend her PATH appointment, the department concluded that Claimant failed to provide good cause for her noncompliance and closed Claimant's FIP case effective April 1, 2013 for a three-month sanction.

At the May 2, 2013 hearing, the department's representatives for the PATH program testified and presented documentary evidence establishing that Claimant failed to contact her PATH case specialist or the department at any time during the nine-week time period during which she failed to attend the PATH program or submit her educational activity logs.

Claimant testified at the hearing that she did not attend her March 6, 2013 reengagement appointment or her March 20, 2013 triage appointment because she never received the Noncompliance Warning Letter or the Notice of Noncompliance that were mailed to her on March 1, 2013 and March 13, 2013, respectively. However, both noncompliance notices were mailed to Claimant's last known address on file with the department and the department did not have any information in Claimant's file indicating that the notices were returned as undeliverable. Moreover, Claimant acknowledged that she did receive the department's Notice of Case Action, which was mailed to the Claimant at the same address. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Here, Claimant has failed to rebut the presumption that she received both noncompliance notices.

Claimant further testified that she failed to attend the PATH program and failed to submit her educational activity logs for nine weeks because she had transportation and child care issues and because she "basically forgot" about her responsibilities to the PATH program.

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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the May 2, 2013 hearing, Claimant was clearly aware of and understood her responsibilities to the PATH program (having signed various documents acknowledging as much) and has therefore failed to show good cause for her failure to participate as required in employment and/or self-sufficiency related activities. Consequently, the department properly closed and imposed a three-month sanction on Claimant's FIP case effective April 1, 2013 for her noncompliance with the PATH program requirements.

#### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed and imposed a three-month sanction on Claimant's FIP case effective April 1, 2013 for her noncompliance with the PATH program requirements. The department's actions are therefore **UPHELD**.

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:

