

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

IN THE MATTER OF:

Reg.

No: 201339860

Issue No: 1038

Case No:

Hearing Date: August 1, 2013

Ingham County DHS

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 group member'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 August 1, 2013. Claimant's group member, [REDACTED], appeared and provided testimony and, at her request, Somali translator [REDACTED] of Language Link Services appeared by conference call and provided translation services. The department was represented by [REDACTED] a family independence manager, and Debra Alvarez, a case manager for the Partnership, Accountability, Training, Hope (PATH) program, both with the department's Ingham County office. The department was also represented by [REDACTED] with Michigan Works.

ISSUE

Whether the department properly terminated and sanctioned Claimant's Family Independence Program (FIP) benefits based on Claimant's group member'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's wife and group member, Shukri Abdi, was a mandatory PATH participant, unless otherwise deferred from the program.
2. On March 20, 2013, the department mailed Claimant a Notice of Noncompliance (DHS 2444) and a Notice of Case Action for Claimant's group member's failure to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant's group member's failure to complete her required ESL hours for the week of March 11, 2013

and her falsification of her community service documentation for the week of March 11, 2013. The Notices indicated that, unless good cause was established, effective May 1, 2013, Claimant's 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's group member on March 27, 2013 at 2:30 p.m. (Department Exhibits 1, 2, 3, 4, 5, 7, 9)

3. Claimant and Claimant's group member attended the March 27, 2013 triage appointment, at which time the department concluded that Claimant's group member did not establish good cause for her noncompliance with the PATH program. (Department Exhibit 8)
4. Effective July 1, 2013, Claimant's FIP case was closed and subject to a three-month sanction for Claimant's group member's failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibit 9)
5. On March 27, 2013, Claimant's group member 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.

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's wife and group member, Shukri Abdi, was required to participate in the PATH program as a condition of Claimant's receipt of FIP benefits. On March 20, 2013, the department found that Ms. Abdi was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, the department determined that Ms. Abdi failed to complete her required ESL hours for the week of March 11, 2013 and had falsified her community service documentation for the week of March 11, 2013. And, because the department ultimately determined that Ms. Abdi did not provide good cause during her triage appointment for her noncompliance with the PATH program, the department closed Claimant's FIP case and imposed a three-month sanction effective May 1, 2013 due to this being Claimant's group's first noncompliance.

At the August 1, 2013 hearing, the department's representative from Michigan Works!, Brandi Pettway, testified that following the department's receipt and review of Ms. Abdi's community service program (CSP) activity log for the week of March 11, 2013, it was determined that the log appeared to have been tampered with because only two of the three entries (for March 13, 2013 and March 15, 2013) had been verified and initialized by an on-site staff member, whereas the third entry (for March 16, 2013) had not been verified and initialized. Ms. Pettway further testified that an audit by Michigan Works, which included contact with the CSP site staff (Marcus Hardy, program assistant with Volunteers of America), confirmed that Ms. Abdi was not at the site on March 16, 2013 to perform the three hours of community service listed on her CSP log. As a result, Ms. Pettway testified that Ms. Abdi was assigned to triage for falsifying her community service documentation for the week of March 11, 2013 and for failing to complete her required ESL hours for the week of March 11, 2013. Ms. Pettway further testified that Ms. Abdi and Claimant attended the March 27, 2013 triage appointment, at which time Ms. Abdi produced revised documentation from the community service site indicating that she was in attendance on March 16, 2013 and worked three hours that day. However, because the department was unable to verify the accuracy of this document where Ms. Abdi's initial submitted log to the department indicated otherwise, and because Ms. Abdi also did not provide an explanation for her failure to complete her required 10 ESL activity hours, the department concluded that Ms. Abdi could not establish good cause for her noncompliance.

Also at the August 1, 2013 hearing, Ms. Abdi testified that she brought with her to the hearing documentation proving that she worked the required hours of community service for the week of March 11, 2013. However, upon review, the documentation submitted by Ms. Abdi (and admitted as Claimant's Exhibit A) includes a work site training agreement signed by Ms. Abdi on March 13, 2013 indicating that she agreed to work 22 hours per week – but does not conclusively establish that Ms. Abdi in fact worked 22 hours at the community service site during the week of March 11, 2013. Ms. Abdi also submitted two education logs dated March 11, 2013 and March 14, 2013, respectively, which appear to be similarly and yet sufficiently different to the original education logs that Ms. Abdi submitted to the department for the week of March 11, 2013. Finally, Ms. Abdi submitted three documents from the Ingham County Health Department, none of which excused Ms. Abdi from her required ESL hours for the week of March 11, 2013.

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 August 1, 2013 hearing, Ms. Abdi has failed to provide an adequate explanation for her submittal of inaccurate education logs for the week of March 11, 2013 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 July 1, 2013 for her noncompliance with the PAT H 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 July 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: August 7, 2013

Date Mailed: August 8, 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/hj

cc:

