

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201341027
Issue No.: 1038; 3029
Case No.: [REDACTED]
Hearing Date: May 13, 2013
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 13, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED], Claimant's daughter. Participants on behalf of Department of Human Services (Department) included [REDACTED], JET Case Manager, and [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case for failure to comply with employment-related activities without good cause?

Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits for failure to comply with 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 and FAP.
2. On February 19, 2013, the Department sent Claimant a Notice of Case Action notifying him that, effective April 1, 2013 it would close his FIP case and reduce his FAP benefits due to failure to comply with employment-related activities without good cause.

3. Claimant filed a request for hearing on February 26, 2013, resulting in a hearing scheduled on March 27, 2013.
4. Claimant did not appear at the March 27, 2013 hearing, and an Order of Dismissal was issued on March 28, 2013.
5. Claimant's FIP case had been reinstated pending the March 27, 2013 hearing, and the Department sent Claimant a March 1, 2013, PATH Appointment Notice requiring his attendance at the PATH program on March 12, 2013.
6. On March 1, 2013, after Claimant spoke to the Department worker and advised her that he would be unable to attend the March 12, 2013 appointment because he was scheduled for back surgery that day, the Department sent Claimant a Medical Determination Verification Checklist (VCL) requesting medical documentation by March 11, 2013, including a DHS-54E providing proof of his surgery date.
7. On March 4, 2013, Claimant submitted documentation from [REDACTED] indicating that he was treated in the hospital emergency room on January 20, 2013.
8. Claimant did not attend the March 12, 2013 PATH appointment.
9. On April 1, 2013, the Department sent Claimant a Notice of Noncompliance scheduling a triage on April 11, 2013, and a Notice of Case Action notifying him that, effective May 1, 2013, it would close his FIP case and reduce his FAP benefits due to failure to comply with employment-related activities without good cause.
10. Claimant participated in the triage by telephone and stated that he had not attended the March 12, 2013 appointment because of his back surgery.
11. The Department concluded that Claimant had failed to verify good cause for his failure to attend the March 12, 2013 appointment.
12. On April 16, 2013, Claimant submitted a DHS-54A signed by his doctor, which did not verify any surgery, did not indicate the duration that Claimant was unable to work at this usual occupation, and did not indicate he was unable to work at any job.
13. On April 9, 2013, Claimant filed a request for hearing disputing the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), the Department of Human Services Bridges Eligibility Manual (BEM), and the Department of Human Services Reference Tables Manual (RFT).

The Family Independence Program (FIP) 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 1999 AC, R 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, R 400.3001 through Rule 400.3015.

Closure of FIP Case

Additionally, the Department initially sent Claimant a Notice of Case Action on February 19, 2013, notifying him that effective April 1, 2013, his FIP case would close and his FAP benefits would be reduced because he had failed to attend a February 12, 2013 PATH appointment. Claimant requested a hearing, which was scheduled on March 27, 2013. The hearing was dismissed when Claimant failed to appear.

However, the Department testified that, because Claimant filed a timely request for hearing on February 26, 2013, his FIP benefits were reinstated pending the hearing. Consequently, the Department sent Claimant a PATH Appointment Notice on March 1, 2013, scheduling a PATH appointment on March 12, 2013. Although it is unclear that the Department had the authority to refer Claimant back to the PATH program pending the initial hearing, by doing so the Department, in essence, excused the initial noncompliance that had resulted in the February 19, 2013 Notice of Case Action. See BAM 600, p 18.

Because Claimant called his worker on March 1, 2013, to tell her that he was having back surgery on March 12, 2013, the Department mailed him a March 1, 2013 Medical Determination Verification Checklist (VCL) to determine his eligibility for a PATH program deferral. The VCL requested that Claimant submit documentation concerning his disability including a DHS-54E Medical Exam Report and proof of date of surgery by March 11, 2013. Claimant provided documentation on March 4, 2013 concerning a January 20, 2013 emergency room treatment. Because Claimant did not provide any further documentation in response to the VCL by the due date concerning his back surgery and current medical condition and did not attend the March 12, 2013, PATH appointment, on April 1, 2013, the Department sent Claimant a Notice of Noncompliance, referencing both Claimant's nonattendance to the PATH program in February 2013 and March 2013 as the noncompliance, and scheduling a triage on April 11, 2013.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A (January 2013), p 7. If the client is not under the supervision of PATH, the triage is

between the Department specialist and the client. BEM 233A, p 8. Good cause is determined by the Department based on the best information available during the triage and prior to the negative action date. BEM 233A, p 7.

In this case, Claimant participated in the triage with the Department by phone. Claimant testified, and the Department verified, that he explained that he had failed to attend the March 12, 2013, PATH appointment because of his back surgery. However, Claimant did not provide any documentation to the Department concerning his surgery at the triage. The only documentation in the Department's file was the hospital discharge that Claimant provided on March 4, 2013, that showed that he was treated in the emergency room on January 20, 2013. This document did not explain Claimant's noncompliance on March 12, 2013. Although Claimant provided further medical documentation in the form of a DHS-54A, that document was provided to the Department on May 16, 2013, which was after the negative action date and therefore was not relevant to the Department's good cause determination. See BAM 220 (November 2012), pp 9, 10; Bulletin Program Glossary (BPG) (October 2012), p 30. Furthermore, even if considered, because the 54-E completed by Claimant's doctor does not indicate when the conditions referenced began or the expected duration, the document was not an adequate verification of a disability or of a good cause explanation for Claimant's noncompliance. See BEM 230A (January 2013), pp 9-10, 19-21.

Under the facts in this case, the Department acted in accordance with Department policy when it concluded that Claimant had failed to provide and verify good cause for his noncompliance and closed his FIP case. The Department presented evidence that Claimant had been subject to a prior noncompliance, evidenced by a First Noncompliance Letter dated August 22, 2011, in which Claimant agreed, in order to avoid a three-month noncompliance sanction, that he was noncompliant without good cause and he would reengage in the work-participation program. The First Noncompliance Letter established that Claimant had been subject to a first occurrence of noncompliance. See BEM 233A (January 2011), pp 6, 8-9. Because the current noncompliance was Claimant's second occurrence of noncompliance, the Department acted in accordance with Department policy in finding that Claimant was subject to a six-month minimum closure of his FIP case. BEM 233A (January 2013), p 6.

Reduction in FAP Benefits

The Department testified that Claimant's FAP benefits were reduced because of his FIP noncompliance. If a client has active FIP and FAP at the time of a FIP noncompliance, the client is disqualified as a member of his FAP group unless there is a finding of FAP good cause. FAP good cause is established if the client satisfies a FIP deferral criteria or good cause reason or if the FAP deferral reason of care of a child under 6 or education applies. Because Claimant did not (i) meet any of the FIP deferral reasons, (ii) provide good cause for the FIP noncompliance, (iii) care for a child under 6, or (iv) present any evidence showing that he was enrolled in a post-secondary education program and working an average of 30 hours or more per week, he failed to establish any basis to avoid the FAP disqualification penalty. See BEM 230B (January 2013), p 4.

A client is disqualified from his FAP group for a minimum of one month for the first occurrence of a FAP penalty for FIP employment-related noncompliance and for a minimum of six months for the second and subsequent occurrence of a FAP penalty for a FIP-employment-related noncompliance, with the disqualification continuing until the client reestablishes FAP eligibility as required under BEM 233B. See BEM 229 (January 2013), p 5; BEM 233B (January 2013), p 5. Previous FIP-related FAP penalties are considered in determining the FAP penalty count. BEM 233B, p 5.

In this case, the Notice of Case Action dated February 19, 2013, shows that Claimant was excluded from his FAP group as a disqualified member for a one-month minimum because of the employment-related FIP disqualification. As discussed above, while his hearing was pending, Claimant's FIP case was reinstated and he was referred back to the PATH program. As a result of the reinstatement of benefits, Claimant never served the one-month minimum penalty applicable to a first-time occurrence of FAP noncompliance. Because there was no evidence presented that Claimant had ever served a FAP disqualification prior to the one he was subject to under the April 1, 2013 Notice of Case Action, the FAP penalty in the April 1, 2013 Notice of Case Action was Claimant's first FAP penalty. Accordingly, Claimant was subject to a one-month minimum FAP sanction, and the Department did not act in accordance with Department policy when it applied a six-month sanction applicable to a second or subsequent occurrence of a FAP noncompliance to Claimant's FAP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with Department policy when it closed and applied a six-month minimum sanction to Claimant's FIP case and when it removed Claimant as a qualified member of his FAP group and reduced the group's FAP benefit, but did not act in accordance with Department policy when it applied a six-month penalty to Claimant's FAP case applicable to second and subsequent occurrences of FAP noncompliance.

Accordingly, the Department's AFFIRMED IN PART with respect to the closure of Claimant's FIP case for a six-month minimum and the reduction of Claimant's FAP benefits due to a disqualification of Claimant as a qualified member of his FAP group AND REVERSED IN PART with respect to the application of a six-month sanction to Claimant's FAP case.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reduce Claimant's FAP disqualification applied on or about May 1, 2013 to a one-month minimum;

2. Begin recalculating Claimant's FAP budget in accordance with Department policy for any months Claimant was in compliance with BEM 233B after the one-month sanction;
3. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from May 1, 2013, ongoing.


Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 5/21/2013

Date Mailed: 5/21/2013

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. (60 days for FAP cases)

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 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

ACE/hw

cc:

