

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

IN THE MATTER OF:

Reg.

No: 201354998

Issue No: 1038

Case No:

Hearing Date: July 25, 2013

Macomb County DHS #12

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 June 27, 2013. After due notice, a telephone hearing was held on July 25, 2013. Claimant appeared and provided testimony. The department was represented by Charles Forster, a family independence specialist 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 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.
2. On May 7, 2013, the state Medical Review Team issued a decision denying Claimant's disability claim, resulting in the termination of Claimant's deferral from mandatory PATH participation requirements. (Department Exhibit 1)
3. On June 1, 2013, the department mailed Claimant a PATH Appointment Notice (DHS-4785), notifying him of his required attendance at the PATH program on June 10, 2013 at 8:30 a.m. The Notice further advised Claimant that his failure to attend the work participation program will result in the denial of benefits. The Notice further advised Claimant that if he was unable to keep this appointment, he must call and reschedule the appointment before the scheduled appointment date. (Department Exhibit 2)

4. Claimant did not attend his PATH appointment on June 10, 2013.
5. On June 20, 2013, the department mailed Claimant a Notice of Noncompliance (DHS-2444) and a Notice of Case Action (DHS-1605) for his failure to participate as required in employment and/or self-sufficiency related activities – specifically, Claimant’s failure to attend his PATH program appointment on June 10, 2013. The Notices indicated that, unless good cause was established, effective August 1, 2013, his 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 June 27, 2013 at 9:00 a.m. (Department Exhibits 3, 5)
6. Claimant attended the June 27, 2013 triage appointment, at which time the department concluded that Claimant did not establish good cause for his failure to attend his June 10, 2013 PATH appointment. (Department Exhibit 4)
7. Effective August 1, 2013, Claimant’s FIP case was closed and subject to a three-month sanction for his failure to participate as required in employment and/or self-sufficiency related activities. (Department Exhibit 5)
8. On June 27, 2013, Claimant submitted a hearing request protesting the department’s closure of his FIP case and imposition of a three-month sanction. (Department Exhibit 6, Request for Hearing)

CONCLUSIONS OF LAW

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 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 his claim for assistance is denied. Mich Admin Code R 400.903(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.

Moreover, when a client is determined by the state Medical Review Team to be work ready with limitations becomes noncompliant with the work participation program or his/her FSSP assigned activities, the department must follow instructions outlined in BEM 233A and set forth herein.

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 June 20, 2013, the department found that Claimant was noncompliant for failing to participate as required in employment and/or self-sufficiency related activities – specifically, his failure to attend his June 10, 2013 PATH appointment. And, because the department found that Claimant's explanation at his June 27, 2013 triage appointment for his failure to attend the PATH appointment did not establish good cause, the department ultimately concluded that Claimant failed to provide good cause for his noncompliance and closed Claimant's FIP case effective August 1, 2013 for a three-month sanction.

At the July 25, 2013 hearing, Claimant testified that despite having been advised by his case specialist, Charles Forster, that his FIP case would be sanctioned if he did not attend the PATH program, he indicated that he truly did not understand and appreciate the consequences of his failure to attend PATH. Claimant further testified that if he had properly understand that his FIP benefits would close, he would have attended the PATH program notwithstanding his multiple medical issues as he would not have intentionally done anything to jeopardize his child's welfare.

Also at the July 25, 2013 hearing, the department's representative and Claimant's case specialist, [REDACTED] confirmed that Claimant's FIP case was closed due to his

failure to attend his PATH appointment. ██████████ acknowledged, however, that Claimant's historic attendance and participation in the PATH program and contact with ██████████ has otherwise been very good and that he appeared to be doing everything he could to maintain his FIP benefits.

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, particularly Claimant's acknowledgement in his hearing request that he has a 9th grade level education and Claimant's testimony regarding his lack of understanding the consequences of his failure to attend his PATH appointment. 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 his WF/JET requirements. As the department has failed to show Claimant was noncompliant without good cause, the department improperly closed and imposed a three-month sanction on Claimant's FIP case for Claimant's non-compliance with PATH requirements.

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 imposed a three-month sanction on Claimant's FIP case for Claimant's non-compliance with PATH requirements.

Accordingly, the department's decision is **REVERSED** and the department is ordered to immediately (i) reinstate Claimant's FIP benefits; (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: August 1, 2013

Date Mailed: August 1, 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:

